

## Article 58.

### Life Insurance and Viatical Settlements.

#### Part 1. General Provisions.

##### **§ 58-58-1. Definitions; requisites of contract.**

All corporations or associations doing business in this State, under any charter or statute of this or any other state, involving the payment of money or other thing of value to families or representatives of policy and certificate holders or members, conditioned upon the continuance or cessation of human life, or involving an insurance, guaranty, contract, or pledge for the payment of endowments or annuities, or who employ agents to solicit such business, are life insurance companies, in all respects subject to the laws herein made and provided for the government of life insurance companies, and shall not make any such insurance, guaranty, contract, or pledge in this State with any citizen, or resident thereof, which does not distinctly state the amount of benefits payable, the manner of payment, the consideration therefor and such other provisions as the Commissioner may require. (1899, c. 54, s. 55; Rev., s. 4773; C.S., s. 6455; 1945, c. 379.)

##### **§ 58-58-5. Industrial life insurance defined.**

Industrial life insurance is hereby declared to be that form of life insurance under which the premiums are payable monthly or oftener, provided the face amount of insurance stated in the policy does not exceed one thousand dollars (\$1,000) and the words "Industrial Policy" are printed upon the policy as a part of the descriptive matter. (1945, c. 379; 1947, c. 721.)

##### **§ 58-58-10. Credit life insurance defined.**

Credit life insurance is declared to be insurance upon the life of a debtor who may be indebted to any person, firm, or corporation extending credit to said debtor. Credit life insurance may include the granting of additional benefits in the event of total and permanent disability of the debtor. (1953, c. 1096, s. 1.)

##### **§ 58-58-15. Any type of survivorship fund in life insurance contract prohibited.**

No life insurance company shall hereafter deliver in this State, as a part of or in combination with any insurance, endowment or annuity contract, any agreement or plan, additional to the rights, dividends, and benefits arising out of any such insurance, endowment or annuity contract, which provides for the accumulation of profits over a period of years and for payment of all or any part of such accumulated profits only to members or policyholders of a designated group or class who continue as members or policyholders until the end of a specified period of years. Nor shall any such company deliver in this State any individual life insurance policy which provides that on the death of anyone not specifically named therein, the owner or beneficiary of the policy shall receive the payment or granting of anything of value. (1955, c. 492.)

##### **§ 58-58-20. Tie-in sales with life insurance prohibited.**

No life insurance company shall hereafter deliver in this State, as a part of or in combination with any insurance, endowment or annuity contract, any agreement or plan, additional to the rights, dividends, and benefits arising out of any such insurance, endowment, or annuity contract which provides for the sale, solicitation, or delivery of any stock or shares of stock in the company issuing the policy or in any other insurance company or other corporation, or benefit certificate, securities, or any special advisory board contract, or other contracts or resolutions of any kind promising

returns and profits, or dividends equivalent to stock dividends as an inducement to or in connection with the sale of the insurance or to the taking of the policy. Nothing herein contained shall be construed as prohibiting any participating insurer from distributing to its policyholders dividends, savings or the unused or unabsorbed portion of premiums and premium deposits. (1957, c. 752.)

**§ 58-58-22. Individual policy standard provisions.**

No policy of individual life insurance shall be delivered in this State unless it contains in substance the following provisions, or provisions that in the Commissioner's opinion are more favorable to the person insured:

- (1) Grace period. – A provision that the insured is entitled to a grace period of 31 days for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force. The policy may provide that if a claim arises under the policy during the grace period, the amount of any premium due or overdue may be deducted from any amount payable under the policy in settlement.
- (2) Incontestability. – A provision that the validity of the policy shall not be contested, except for nonpayment of premium, once it has been in force for two years after its date of issue; and that no statement made by any person insured under the policy about that person's insurability shall be used during the person's lifetime to contest the validity of the policy after the insurance has been in force for two years.
- (3) Misstatement of age or gender. – A provision specifying an equitable adjustment of premiums or benefits, or both, to be made if the age or gender of the person insured has been misstated; the provision to contain a clear statement of the method of adjustment to be used.
- (4) Suicide. – A provision that may not limit payment of benefits for a period more than two years after the date of issue of the policy because of suicide and that provides for at least the return of premiums paid on the policy if there is suicide during the two-year period.
- (5) Reinstatement. – A provision that, unless the policy has been surrendered for its cash surrender value, or its cash surrender value has been exhausted, the policy will be reinstated at any time within five years after the date of premium default upon written application therefor, the production of evidence of insurability satisfactory to the insurer, the payment of all overdue premiums, and the payment of reinstatement of any other indebtedness to the insurer upon the policy, all with interest at the rate specified. (1995, c. 517, s. 31(a).)

**§ 58-58-23. Standard provisions for annuity and pure endowment contracts.**

No annuity or pure endowment contract, except a reversionary or survivorship annuity and except a group annuity contract, shall be delivered or issued for delivery in this State unless it contains in substance the following provisions or provisions that in the opinion of the Commissioner are more favorable to the holders of the contracts:

- (1) Grace period. – A provision for a grace period of not less than 31 days within which any stipulated payment to the insurer falling due after the first payment may be made. During the grace period, the contract shall continue in full force. If a claim arises under the contract because of death before the expiration of the

grace period and before the overdue payment to the insurer is made, the amount of the payments, with interest on any overdue payments, may be deducted from any amount payable under the contract.

- (2) Incontestability. – If any statements are required as a condition of issue, there shall be a provision that the contract shall be incontestable during the lifetime of the person or of each of the persons as to whom the statements are required after it has been in force for a period of two years after its date of issue, except for nonpayment of stipulated payments to the insurer.
- (3) Misstatements of age or gender. – A provision that if the age or gender of any person upon whose life the contract is made has been misstated, the amount payable or benefits accruing under the contract shall be such as the stipulated payment or payments to the insurer would have been according to the correct age or gender; and if the insurer makes an overpayment because of the misstatement, that amount with interest at the rate specified in the contract may be charged against any current or subsequent payment by the insurer under the contract.
- (4) Reinstatement. – A provision that the contract may be reinstated at any time within one year after a default in making stipulated payments to the insurer, unless the cash surrender value has been paid; but all overdue stipulated payments and any indebtedness to the insurer on the contract shall be paid or reinstated with interest at a rate specified in the contract. When applicable, the insurer may also require evidence of insurability satisfactory to the insurer. (1995, c. 517, s. 31(a).)

**§ 58-58-25. Policies to be issued to any person possessing the sickle cell trait or hemoglobin C trait.**

No insurance company licensed in this State pursuant to the provisions of Articles 1 through 64 of this Chapter shall refuse to issue or deliver any policy of life insurance authorized thereunder solely by reason of the fact that the person to be insured possesses sickle cell trait or hemoglobin C trait; nor shall any such policy issued and delivered in this State carry a higher premium rate or charge by reason of the fact that the person to be insured possesses said traits. The term "sickle cell trait" is defined as the condition wherein the major natural hemoglobin components present in the blood of the individual are hemoglobin A (normal) and hemoglobin S (sickle hemoglobin) as defined by standard chemical and physical analytic techniques, including electrophoresis, and the proportion of hemoglobin A is greater than the proportion of hemoglobin S or one natural parent of the individual is shown to have only normal hemoglobin components (hemoglobin A, hemoglobin A2, hemoglobin F) in the normal proportions by standard chemical and physical analytic tests. The term "hemoglobin C trait" is defined as the condition wherein the major natural hemoglobin components present in the blood of the individual are hemoglobin A (normal) and hemoglobin C as defined by standard chemical and physical analytic techniques, including electrophoresis, and the proportion of hemoglobin A is greater than the proportion of hemoglobin C or one natural parent of the individual is shown to have only normal hemoglobin components (hemoglobin A, hemoglobin A2, hemoglobin F) in the normal proportions by standard chemical and physical analytic tests. (1975, c. 600, s. 1.)

**§ 58-58-30. Soliciting agent represents the company.**

A person who solicits an application for insurance upon the life of another, in any controversy relating thereto between the insured or his beneficiary and the company issuing a policy upon such application, is the agent of the company and not of the insured. (1907, c. 958, s. 1; C.S., s. 6457.)

**§ 58-58-35. Discrimination between insurants forbidden.**

A life insurance company doing business in this State shall not make any distinction or discrimination in favor of individuals between insurants of the same class and equal expectation of life in the amount of payment of premiums or rates charged for policies of life or endowment insurance, or in the dividends or other benefits payable thereon, or in any of the terms and conditions of the contracts it makes; nor shall any such company or any agent thereof make any contract of insurance or agreement as to such contract other than as plainly expressed in the policy issued thereon, nor pay or allow as inducement to insurance any rebate of premium payable on the policy, or any special favor or advantage in the dividends or other benefit to accrue thereon, or any valuable consideration or inducement whatever not specified in the policy contract of insurance; nor give, sell, or purchase, or offer to give, sell, or purchase as inducement to insurance or in connection therewith any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits to accrue therein, or anything of value whatsoever not specified in the policy. (1899, c. 54, s. 57; 1903, c. 438, ss. 5, 10; Rev., s. 4775; 1911, c. 196, s. 7; C.S., s. 6458.)

**§ 58-58-40. Misrepresentations of policy forbidden.**

No life insurance company doing business in this State, and no officer, director, solicitor, or other agent thereof, shall make, issue, or circulate, or cause to be made, issued, or circulated any estimate, illustration, circular, or statement of any sort misrepresenting the terms of the policy issued by it or the dividends or share of surplus to be received thereon, or shall use any name or title of any policy or class of policies misrepresenting the true nature thereof. Nor shall any such company, agent, or broker make any misrepresentation to any person insured in said company or in any other insurer or governmental agency for the purpose of inducing or tending to induce such person to lapse, forfeit, or surrender his said insurance. (1913, c. 95; C.S., s. 6459; 1947, c. 721.)

**§ 58-58-42:** Repealed by Session Laws 2001-436, s. 5.

Part 2. Financial Provisions.

**§ 58-58-45. Financial Provisions.**

The valuation of the reserves on the policies and bonds of every life insurance company incorporated by the laws of this State shall be based upon any recognized standard of valuation and mortality table as the Commissioner should deem best for the security of the business and the safety of the persons insured. The Commissioner shall annually value or cause to be valued the reserves on all policies and annuities of each domestic company and may accept the valuation of such reserves made by the company upon such evidence of its correctness as he may require. Upon this valuation being made by the Commissioner and a certificate thereof furnished by him, each company shall pay to such officer, to defray the expenses thereof, the sum of one cent (1¢) for every thousand dollars (\$1,000) of the whole amount insured by its policies so valued. The reserve fund hereinbefore provided for shall not be available for or used for any other purpose than the discharge of policy obligations, but is a trust fund to be held and expended only for the benefit of policyholders. In case of the insolvency of the company, the reserve on outstanding policies may,

with the consent of the Commissioner, be used for the reinsurance of its policies to the extent of their pro rata part thereof. (1903, c. 536, s. 4; 1905, c. 410; Rev., s. 4777; 1907, c. 1000, s. 7; C.S., s. 6461; 1945, c. 379.)

**§ 58-58-50. Standard Valuation Law.**

(a) This section shall be known as the Standard Valuation Law.

(a1) As used in this section:

- (1) Appointed actuary. – A qualified actuary who is appointed in accordance with the valuation manual to prepare the actuarial opinion required in subsection (j1) of this section.
- (2) Company. – An entity which has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, annuity contracts, pure endowment contracts, or deposit-type contracts (i) in this State and has at least one such policy in force or on claim or (ii) in any state and is required to hold a certificate of authority to write life insurance, accident and health insurance, annuity contract, pure endowment, or deposit-type contracts in this State.
- (3) Deposit-type contract. – A contract that does not incorporate mortality or morbidity risks and as may be specified in the valuation manual.
- (4) Policyholder behavior. – Any action a policyholder, contract holder, or any other person with the right to elect options, such as a certificate holder, may take under a policy or contract subject to this section, including, but not limited to, lapse, withdrawal, transfer, deposit, premium payment, loan, annuitization, or benefit elections prescribed by the policy or contract but excluding events of mortality or morbidity that result in benefits prescribed in their essential aspects by the terms of the policy or contract.
- (5) Principle-based valuation. – A reserve valuation that uses one or more methods or one or more assumptions determined by the insurer and is required to comply with subsection (n) of this section as specified in the valuation manual.
- (6) Qualified actuary. – An individual who is qualified to sign the applicable statement of actuarial opinion in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements and who meets the requirements specified in the valuation manual.
- (7) Reserves. – Reserve liabilities.
- (8) Tail risk. – A risk that occurs either where the frequency of low probability events is higher than expected under a normal probability distribution or where there are observed events of very significant size or magnitude.
- (9) Valuation manual. – The manual of valuation instructions adopted by the NAIC as specified in this section or as subsequently amended.

(b) This subsection applies to policies and contracts issued prior to the operative date of the valuation manual. Each year the Commissioner shall value or cause to be valued the reserves for all outstanding life insurance policies, annuity contracts, pure endowment contracts, accident and health insurance contracts, and deposit-type contracts of every life insurance company doing business in this State. In the case of an alien company, the valuation shall be limited to its United States business. Group methods and approximate averages for fractions of a year or otherwise may be used by the Commissioner in calculating the company's reserves, and the Commissioner may accept the valuation made by the company upon evidence of its correctness that the Commissioner requires. For foreign or alien insurance companies, the Commissioner may accept any valuation made or caused to be made by the insurance regulator of any state or other jurisdiction if that valuation complies with the minimum standard provided in this section.

(b1) The provisions set forth in subsections (c), (d), (d1), (e), (f), (g), (h), and (k) of this section shall apply to all policies and contracts, as appropriate, subject to this section issued on or after the effective date of this section and prior to the operative date of the valuation manual. The provisions set forth in subsections (m) and (n) of this section shall not apply to policies issued prior to the operative date of the valuation manual.

(b2) This subsection applies to policies and contracts issued on or after the operative date of the valuation manual. The Commissioner shall annually value, or cause to be valued, the reserves for all outstanding life insurance contracts, annuity contracts, pure endowment contracts, accident and health insurance contracts, and deposit-type contracts of every company issued on or after the operative date of the valuation manual. In lieu of the valuation of the reserves required of a foreign or alien company, the Commissioner may accept a valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when that valuation complies with the minimum standard provided in this section.

(b3) The provisions set forth in subsections (m) and (n) of this section shall apply to all policies and contracts issued on or after the operative date of the valuation manual.

(c) (1) Except as otherwise provided in subdivisions (3) and (4) of this subsection, or in subsection (k) of this section, the minimum standard for the valuation of all such policies and contracts issued before the effective date of this section shall be that provided by the laws in effect immediately before that date, except that the minimum standard for the valuation of annuities and pure endowments purchased under group annuity and pure endowment contracts issued before that date shall be that provided by the laws in effect immediately before that date but replacing the interest rates specified in such laws by an interest rate of five percent (5%) per annum, and five and one-half percent (5 1/2%) interest for single premium life insurance policies.

(2) Except as otherwise provided in subdivisions (3) and (4) of this subsection, or in subsection (k) of this section, the minimum standards for the valuation of all such policies and contracts issued on or after the effective date of this section shall be the Commissioner's reserve

valuation methods defined in subsections (d), (d1), (g), and (k) of this section, five percent (5%) interest for group annuity and pure endowment contracts and three and one-half percent (3 1/2%) interest for all other policies and contracts, or, in the case of policies and contracts other than annuity and pure endowment contracts, issued on or after July 1, 1975, four percent (4%) interest for such policies issued prior to April 19, 1979, and four and one-half percent (4 1/2%) interest for such policies issued on or after April 19, 1979, and the following tables:

- a. For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies – the Commissioner's 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of subdivision (e)(2) of G.S. 58-58-55, the Commissioner's 1958 Standard Ordinary Mortality Table for such policies issued on or after the operative date of subdivision (e)(2) of G.S. 58-58-55 prior to the operative date of subdivision (e)(4) of G.S. 58-58-55, provided that for any category of such policies issued on female risks, all modified net premiums and present values referred to in this section may be calculated according to an age not more than six years younger than the actual age of the insured; and, for such policies issued on or after the operative date of subdivision (e)(4) of G.S. 58-58-55, (i) the Commissioner's 1980 Standard Ordinary Mortality Table, or (ii) at the election of the company for any one or more specified plans of life insurance, the Commissioner's 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors, or (iii) any ordinary mortality table, adopted after 1980 by the NAIC, that is approved by regulation promulgated by the Commissioner for use in determining the minimum standard of valuation for such policies;
- b. For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies – the 1941 Standard Industrial Mortality Table for such policies issued prior to the operative date of subdivision (e)(3) of G.S. 58-58-55 and for such policies issued on or after such operative date the Commissioner's 1961 Standard Industrial Mortality Table or any industrial mortality table, adopted after 1980 by the NAIC, that is approved by regulation promulgated by the Commissioner for use in determining the minimum standard of valuation for such policies;
- c. For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies – the 1937 Standard Annuity Mortality Table or, at the option of the company, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the Commissioner;
- d. For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies – the Group Annuity Mortality Table for 1951, any modification of such table approved by the Commissioner, or, at the option of the company, any of

- the tables or modifications of tables specified for individual annuity and pure endowment contracts;
- e. For total and permanent disability benefits in or supplementary to ordinary policies or contracts – for policies or contracts issued on or after January 1, 1966, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates, adopted after 1980 by the NAIC, that are approved by regulation promulgated by the Commissioner for use in determining the minimum standard of valuation for such policies; for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either such tables or, at the option of the company, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies;
  - f. For accidental death benefits in or supplementary to policies – for policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits Table or any accidental death benefits table, adopted after 1980 by the NAIC, that is approved by regulation promulgated by the Commissioner for use in determining the minimum standard of valuation for such policies; for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the company, the Inter-Company Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Inter-Company Double Indemnity Mortality Table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies;
  - g. For group life insurance, life insurance issued on the substandard basis and other special benefits – such tables as may be approved by the Commissioner.
- (3) Except as provided in subdivision (4) of this subsection, the minimum standard of valuation for individual annuity and pure endowment contracts issued on or after the operative date of this subdivision (3), as defined herein, and for annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts, shall be the Commissioner's reserve valuation methods defined in subsections (d) and (d1) of this section and the following tables and interest rates:
- a. For individual annuity and pure endowment contracts issued prior to April 19, 1979, excluding any disability and accidental death benefits in such contracts – the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the Commissioner, and six percent (6%) interest for single premium immediate annuity contracts,

- and four percent (4%) interest for all other individual annuity and pure endowment contracts;
- b. For individual single premium immediate annuity contracts issued on or after April 19, 1979, excluding any disability and accidental death benefits in such contracts – the 1971 Individual Annuity Mortality Table or any individual annuity mortality table, adopted after 1980 by the NAIC, that is approved by regulation promulgated by the Commissioner for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the Commissioner, and seven and one-half percent (7 1/2%) interest;
  - c. For individual annuity and pure endowment contracts issued on or after April 19, 1979, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts – the 1971 Individual Annuity Mortality Table or any individual annuity mortality table, adopted after 1980 by the NAIC, that is approved by regulation promulgated by the Commissioner for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the Commissioner, and five and one-half percent (5 1/2%) interest for single premium deferred annuity and pure endowment contracts and four and one-half percent (4 1/2%) interest for all other such individual annuity and pure endowment contracts;
  - d. For all annuities and pure endowments purchased prior to April 19, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts – the 1971 Group Annuity Mortality Table, or any modification of this table approved by the Commissioner, and six percent (6%) interest;
  - e. For all annuities and pure endowments purchased on or after April 19, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts – the 1971 Group Annuity Mortality Table or any group annuity mortality table, adopted after 1980 by the NAIC, that is approved by regulation promulgated by the Commissioner for use in determining the minimum standard of valuation for such annuities and pure endowments, or any modification of these tables approved by the Commissioner, and seven and one-half percent (7 1/2%) interest.

After July 1, 1975, any company may file with the Commissioner a written notice of its election to comply with the provisions of this subdivision (3) after a specified date before January 1, 1979, which shall be the operative date of this subdivision for such company, provided, a company may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If a company makes no such election, the operative date of this subdivision for such company shall be January 1, 1979.

- (4) a. Applicability of this subdivision. The interest rates used in determining the minimum standard for the valuation of:

1. Life insurance policies issued in a particular calendar year, on or after the operative date of subdivision (e)(4) of G.S. 58-58-55,
  2. Individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1982,
  3. Annuities and pure endowments purchased in a particular calendar year on or after January 1, 1982, under group annuity and pure endowment contracts, and
  4. The net increase, if any, in a particular calendar year after January 1, 1982, in amounts held under guaranteed interest contracts shall be the calendar year statutory valuation interest rates as defined in this subdivision.
- b. Calendar Year Statutory Valuation Interest Rates.
1. The calendar year statutory valuation interest rates, I shall be determined as follows and the results rounded to the nearer one-quarter of one percent ( $1/4$  of 1%):
    - I. For life insurance,  

$$I = .03 \text{ plus } W (R_1 - .03) \text{ plus } W/2 : (R_2 - .09);$$
    - II. For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options,  

$$I = .03 \text{ plus } W (R - .03)$$

where  $R_1$  is the lesser of  $R$  and  $.09$ ,  
 $R_2$  is the greater of  $R$  and  $.09$ ,  
 $R$  is the reference interest rate defined in this subdivision, and  
 $W$  is the weighting factor defined in this subdivision,
    - III. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in II above, the formula for life insurance stated in I above shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of 10 years and the formula for single premium immediate annuities stated in II above shall apply to annuities and guaranteed interest contracts with guarantee duration of 10 years or less,
    - IV. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in II above shall apply,
    - V. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in II above shall apply.

2. However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one-half of one percent ( $\frac{1}{2}$  of 1%), the calendar year statutory valuation interest rate for such life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980 (using the reference interest rate defined for 1979) and shall be determined for each subsequent calendar year regardless of when subdivision (e)(4) of G.S. 58-58-55 becomes operative.

c. Weighting Factors.

1. The weighting factors referred to in the formulas stated above are given in the following tables:

I. Weighting Factors for Life Insurance:

Guarantee	
Duration	Weighting
<u>(Years)</u>	<u>Factors</u>
10 or less	.50
More than 10, but not more than 20	.45
More than 20	.35

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy;

- II. Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options:

.80

- III. Weighting factors for other annuities and for guaranteed interest contracts, except as stated in II. above, shall be as specified in tables (i), (ii), and (iii) below, according to the rules and definitions in (iv), (v) and (vi) below:

- (i) For annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee	Weighting Factor		
Duration	For Plan Type		
<u>(Years)</u>	<u>A</u>	<u>B</u>	<u>C</u>

	5 or less:	.80	.60	.50
	More than 5, but not more than 10:	.75	.60	.50
	More than 10, but not more than 20:	.65	.50	.45
	More than 20:	.45	.35	.35
(ii)	For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in (i) above increased by:	Plan Type <u>A</u>	<u>B</u>	<u>C</u>
(iii)	For annuities and guaranteed interest contracts valued on an issue year basis (other than those with no cash settlement options) which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than 12 months beyond the valuation date, the factors shown in (i) or derived in (ii) increased by:	.15	.25	.05
(iv)	For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in	Plan Type <u>A</u>	<u>B</u>	<u>C</u>
		.05	.05	.05

excess of 20 years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

- (v) Plan type as used in the above tables is defined as follows:

Plan Type A: At any time policyholder may withdraw funds only (1) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or (2) without such adjustment but in installments over five years or more, or (3) as an immediate life annuity, or (4) no withdrawal permitted.

Plan Type B: Before expiration of the interest rate guarantee, policyholder may withdraw funds only (1) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or (2) without such adjustment but in installments over five years or more, or (3) no withdrawal permitted. At the end of interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than five years.

Plan Type C: Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five years either (1) without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or (2) subject only to a fixed surrender charge

stipulated in the contract as a percentage of the fund.

- (vi) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. As used in this section, an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract, and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

d. Reference Interest Rate.

- 1. The reference interest rate referred to in paragraph b of this subdivision shall be defined as follows:
  - I. For all life insurance, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year next preceding the year of issue, of Moody's Corporate Bond Yield Average – Monthly Average Corporates, as published by Moody's Investors Service, Inc.
  - II. For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or year of purchase, of Moody's Corporate Bond Yield Average – Monthly Average Corporates, as published by Moody's Investors Service, Inc.
  - III. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in II above, with guarantee duration in excess of 10

years, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average – Monthly Average Corporates, as published by Moody's Investors Service, Inc.

IV. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in II above, with guarantee duration of 10 years or less, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average – Monthly Average Corporates, as published by Moody's Investors Service, Inc.

V. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average – Monthly Average Corporates, as published by Moody's Investors Service, Inc.

VI. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in II above, the average over a period of 12 months, ending on June 30 of the calendar year of the change in the fund, of Moody's Corporate Bond Yield Average – Monthly Average Corporates, as published by Moody's Investors Service, Inc.

e. Alternative Method for Determining Reference Interest Rates.

1. In the event that Moody's Corporate Bond Yield Average – Monthly Average Corporates is no longer published by Moody's Investors Service, Inc., or in the event that the NAIC determines that Moody's Corporate Bond Yield Average – Monthly Average Corporates as published by Moody's Investors Service, Inc., is no longer appropriate for the determination of the reference interest rate, than an alternative method for determination of the reference interest rate, which is adopted by the NAIC and approved by regulation promulgated by the Commissioner, may be substituted.

(d) Except as otherwise provided in subsections (d1), (g), and (k) of this section reserves according to the Commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such

policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (1) and (2), as follows:

- (1) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the 19-year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.
- (2) A net one year term premium for such benefits provided for in the first policy year.

Provided that for any life insurance policy issued on or after January 1, 1985, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefits are provided in the first year for such excess and which provides an endowment benefit or a cash surrender value of a combination thereof in an amount greater than such excess premium, the reserve according to the Commissioner's reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in subsection (g), be the greater of the reserve as of such policy anniversary calculated as described in the first paragraph of this subsection and the reserve as of such policy anniversary calculated as described in that paragraph, but with (i) the value defined in subparagraph (1) of that paragraph being reduced by fifteen percent (15%) of the amount of such excess first year premium, (ii) all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date, (iii) the policy being assumed to mature on such date as an endowment, and (iv) the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison the mortality and interest bases stated in subdivisions (2) and (4) of subsection (c) shall be used.

Reserves according to the Commissioner's reserve valuation method for: (i) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums; (ii) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended; (iii) disability and accidental death benefits in all policies and contracts; and (iv)

all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the principles of this subsection except that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums.

(d1) This subsection shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended.

Reserves according to the Commissioner's annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values.

(e) In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after the effective date of this section, be less than the aggregate reserves calculated in accordance with the methods set forth in subsections (d), (d1), (g) and (h) of this section and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies. In no event shall the aggregate reserves for all policies, contracts, and benefits be less than the aggregate reserves determined by the appointed actuary to be necessary to render the opinion required by subsection (i) or subsection (j1) of this section.

(f) Reserves for all policies and contracts issued before the effective date of this section may be calculated, at the option of the company, according to any standards that produce greater aggregate reserves for those policies and contracts than the minimum reserves required by the laws in effect immediately before that date.

Reserves for any category of policies, contracts or benefits as established by the Commissioner, issued on or after the effective date of this section may be calculated, at the option of the company, according to any standards that produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be greater than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided in the policies or contracts.

Any such company that adopts any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the Commissioner, adopt any lower standard of valuation, but not lower than the minimum provided in this section. Provided, however, that for the purposes of this section, the holding of additional reserves previously determined by the appointed actuary to be necessary to render the opinion required by subsection (i) or (j1) of this section shall not be deemed to be the adoption of a higher standard of valuation.

(g) If in any contract year the gross premium charged by any company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the reserve calculated by the method actually used for such policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this subsection are those standards stated in subdivisions (1), (2) and (4) of subsection (c).

Provided that for any life insurance policy issued on or after January 1, 1985, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the foregoing provisions of this subsection shall be applied as if the method actually used in calculating the reserve for such policy were the method described in subsection (d), ignoring the second paragraph of subsection (d). The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with subsection (d), including the second paragraph of that subsection, and the minimum reserve calculated in accordance with this subsection.

(h) In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in subsections (d), (d1) and (g), the reserves which are held under any such plan must:

- (1) Be appropriate in relation to the benefits and the pattern of premiums for that plan, and
- (2) Be computed by a method which is consistent with the principles of this Standard Valuation Law, as determined by regulations promulgated by the Commissioner.

(i) Prior to the operative date of the valuation manual as specified in G.S. 58-58-51, every life insurance company doing business in this State shall annually submit the opinion

of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the Commissioner by rule are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with previously reported amounts, and comply with applicable laws of this State. The Commissioner by rule shall define the specifics of this opinion and add any other items deemed to be necessary to its scope. Every life insurance company, except as exempted by or pursuant to rule, shall also annually include in the opinion required by this subsection, an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the Commissioner by rule, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts. The Commissioner may provide by rule for a transition period for establishing any higher reserves that the qualified actuary may deem to be necessary in order to render the opinion required by this subsection.

(j) Each opinion required by subsection (i) of this section shall be governed by the following provisions:

- (1) A memorandum, in form and substance acceptable to the Commissioner as specified by rule, shall be prepared to support each actuarial opinion.
- (2) If the insurance company fails to provide a supporting memorandum at the request of the Commissioner within a period specified by rule or the Commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the rules or is otherwise unacceptable to the Commissioner, the Commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare such supporting memorandum as is required by the Commissioner.
- (3) The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after December 31, 1994.
- (4) The opinion shall apply to all business in force including individual and group health insurance plans, in form and substance acceptable to the Commissioner as specified by rule.
- (5) The opinion shall be based on standards adopted from time to time by the actuarial standards board and on such additional standards as the Commissioner may by rule prescribe.
- (6) In the case of an opinion required to be submitted by a foreign or alien company, the Commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the Commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this State.

- (7) Repealed by Session Laws 2015-281, s. 1, effective upon contingency. See note.
- (8) Except in cases of fraud or willful misconduct, the qualified actuary shall not be liable for damages to any person (other than the insurance company and the Commissioner) for any act, error, omission, decision, or conduct with respect to the actuary's opinion.
- (9) Disciplinary action by the Commissioner against the company or the qualified actuary shall be defined in rules by the Commissioner.
- (10) Except as provided in subdivisions (14), (15), and (16) of this subsection, documents, materials, or other information in the possession or control of the Commissioner that are included in a memorandum in support of the opinion, and any other material provided by the company to the Commissioner in connection with the opinion, shall be confidential by law and privileged, shall not be subject to or public records under G.S. 58-2-100 or Chapter 132 of the General Statutes, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the Commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the Commissioner's official duties.
- (11) Neither the Commissioner nor any person who received documents, materials, or other information while acting under the authority of the Commissioner shall be permitted or required to testify concerning any confidential documents, materials, or information subject to subdivision (10) of this subsection in any private civil action.
- (12) In order to assist in the performance of the Commissioner's duties, the Commissioner may do any of the following:
  - a. Share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subdivision (10) of this subsection, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information.
  - b. Receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

- c. Enter into agreements governing sharing and use of information consistent with subdivisions (10) through (12) of this subsection.
- (13) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Commissioner under this section or as a result of sharing authorized by subdivision (12) of this subsection.
- (14) A memorandum in support of an opinion, and any other material provided by the company in connection with the memorandum, may be subject to subpoena for the purpose of defending an action seeking damages from the actuary submitting the memorandum by reason of any action required by this section or by rules adopted under this section.
- (15) The memorandum or other material may otherwise be released by the Commissioner (i) with the written consent of the company or (ii) to the American Academy of Actuaries upon request stating the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the Commissioner for preserving the confidentiality of the memorandum or other material.
- (16) Once any portion of the confidential memorandum is cited by the company in its marketing or is cited before any governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum shall no longer be confidential.

(j1) On or after the operative date of the valuation manual, every company with outstanding life insurance contracts, annuity contracts, pure endowment contracts, accident and health insurance contracts, or deposit-type contracts in this State and subject to regulation by the Commissioner shall annually submit the opinion of the appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with previously reported amounts, and comply with applicable laws of this State. The valuation manual shall prescribe the specifics of this opinion, including any items deemed to be necessary to its scope. Every company with outstanding life insurance contracts, annuity contracts, pure endowment contracts, accident and health insurance contracts, or deposit-type contracts in this State and subject to regulation by the Commissioner, except as exempted in the valuation manual, shall also annually include in the opinion required by this subsection an opinion of the same appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified in the valuation manual, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including, but not limited to, the benefits under and expenses associated with the policies and contracts.

(j2) Each opinion required by subsection (j1) of this section shall be governed by the following provisions:

- (1) A memorandum, in form and substance as specified in the valuation manual and acceptable to the Commissioner, shall be prepared to support each actuarial opinion.
- (2) If the company fails to provide a supporting memorandum at the request of the Commissioner within a period specified in the valuation manual, or the Commissioner determines that the supporting memorandum provided by the company fails to meet the standards prescribed by the valuation manual or is otherwise unacceptable to the Commissioner, the Commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare such supporting memorandum as is required by the Commissioner.
- (3) The opinion shall be in form and substance as specified in the valuation manual and acceptable to the Commissioner.
- (4) The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after the operative date of the valuation manual.
- (5) The opinion shall apply to all policies and contracts subject to subsection (j1) of this section plus other actuarial liabilities as specified in the valuation manual.
- (6) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board or its successor and on such additional standards as may be prescribed in the valuation manual.
- (7) In the case of an opinion required to be submitted by a foreign or alien company, the Commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the Commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this State.
- (8) Except in cases of fraud or willful misconduct, the appointed actuary shall not be liable for damages to any person (other than the company and the Commissioner) for any act, error, omission, decision, or conduct with respect to the appointed actuary's opinion.
- (9) Disciplinary action by the Commissioner against the company or the appointed actuary shall be defined in rules by the Commissioner.

(k) The Commissioner shall adopt rules containing the minimum standards applicable to the valuation of accident and health insurance contracts issued prior to the operative date of the valuation manual. The Commissioner may also adopt rules for the purpose of recognizing new annuity mortality tables for use in determining reserve liabilities for annuities and may adopt rules that govern minimum valuation standards for reserves of life insurance companies. In adopting these rules, the Commissioner may consider model laws and regulations promulgated and amended from time to time by the NAIC.

- (l) The Commissioner may adopt rules for life insurers for the following matters:
  - (1) Reserves for contracts issued by insurers.
  - (2) Optional smoker-nonsmoker mortality tables permitted for use in determining minimum reserve liabilities and nonforfeiture benefits.
  - (3) Optional blended gender mortality tables permitted for use in determining nonforfeiture benefits for individual life policies.
  - (4) Optional tables acceptable for use in determining reserves and minimum cash surrender values and amounts of paid-up nonforfeiture benefits.
  - (5) Assumptions for policyholder withdrawal rates for use in determining minimum reserve liabilities.

In adopting these rules, the Commissioner may consider model laws and regulations promulgated and amended from time to time by the NAIC.

- (m) The valuation manual shall apply as described in this subsection:
  - (1) For policies issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under subsections (b2) and (b3) of this section, except as provided under subdivision (5) or (7) of this subsection.
  - (2) The operative date of the valuation manual is specified in G.S. 58-58-51(b).
  - (3) Unless a change in the valuation manual specifies a later effective date, changes to the valuation manual shall be effective on January 1 of the year following the date when the change to the valuation manual has been adopted by the NAIC by an affirmative vote representing each of the following:
    - a. At least three-fourths of the members of the NAIC voting but not less than a majority of the total membership.
    - b. Members of the NAIC representing jurisdictions totaling more than seventy-five percent (75%) of the direct premiums written as reported in the following annual statements most recently available prior to the vote described in this subdivision: life, accident and health annual statements; health annual statements; and fraternal annual statements.
  - (4) The valuation manual must specify all of the following:
    - a. Minimum valuation standards for and definitions of the policies or contracts subject to subsections (b2) and (b3) of this section. Such minimum valuation standards shall be as follows:
      1. The Commissioner's reserve valuation method for life insurance contracts subject to subsections (b2) and (b3) of this section.
      2. The Commissioner's annuity reserve valuation method for annuity contracts subject to subsections (b2) and (b3) of this section.
      3. Minimum reserves for all other policies or contracts subject to subsections (b2) and (b3) of this section.
    - b. The policies or contracts or types of policies or contracts that are subject to the requirements of a principle-based valuation as described in

- subsection (n) of this section and the minimum valuation standards consistent with those requirements.
- c. For policies and contracts subject to a principle-based valuation under subsection (n) of this section, each of the following:
    1. Requirements for the format of reports to the Commissioner under sub-subdivision (2)c. of subsection (n) of this section. Such reports shall include information necessary to determine if the valuation is appropriate and in compliance with this section.
    2. Assumptions shall be prescribed for risks over which the company does not have significant control or influence.
    3. Procedures for corporate governance and oversight of the actuarial function and a process for appropriate waiver or modification of such procedures.
  - d. For policies not subject to a principle-based valuation under subsection (n) of this section, the minimum valuation standard shall either:
    1. Be consistent with the minimum standard of valuation prior to the operative date of the valuation manual; or
    2. Develop reserves that quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring.
  - e. Other requirements, including, but not limited to, those relating to reserve methods, models for measuring risk, generation of economic scenarios, assumptions, margins, use of company experience, risk measurement, disclosure, certifications, reports, actuarial opinions and memorandums, transition rules, and internal controls.
  - f. The data and form of the data required under subsection (o) of this section, to whom the data must be submitted, and may specify other requirements, including data analyses and reporting of analyses.
- (5) In the absence of a specific valuation requirement, or if a specific valuation requirement in the valuation manual is not, in the opinion of the Commissioner, in compliance with this section, then the company shall, with respect to such requirements, comply with minimum valuation standards prescribed by the Commissioner by rule.
  - (6) The Commissioner may engage a qualified actuary, at the expense of the company, to perform an actuarial examination of the company and opine on the appropriateness of any reserve assumption or method used by the company, or to review and opine on a company's compliance with any requirement set forth in this section. The Commissioner may rely upon the opinion, regarding provisions contained in this section, of a qualified actuary engaged by the insurance regulator of another state, district, or territory of the United States. As used in this subdivision, the term "engage" includes employment and contracting.

- (7) The Commissioner may require a company to change any assumption or method that, in the opinion of the Commissioner, is necessary in order to comply with the requirements of the valuation manual or this section; and the company shall adjust the reserves as required by the Commissioner. The Commissioner may take other disciplinary action as specified in rules adopted by the Commissioner.
- (n) The requirements of this subsection shall apply to any principle-based valuation of policies issued on or after the operative date of the valuation manual:
- (1) A company using a principle-based valuation for one or more policies or contracts subject to this subsection as specified in the valuation manual must establish, for those policies and contracts, reserves that meet all of the following:
- a. Quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring during the lifetime of the contracts. For policies or contracts with significant tail risk, the reserves shall reflect conditions appropriately adverse to quantify the tail risk.
  - b. Incorporate assumptions, risk analysis methods, financial models, and management techniques that are consistent with, but not necessarily identical to, those utilized within the company's overall risk assessment process, while recognizing potential differences in financial reporting structures and any prescribed assumptions or methods.
  - c. Incorporate assumptions that are derived in one of the following manners:
    - 1. The assumption is prescribed in the valuation manual.
    - 2. For assumptions that are not prescribed, the assumptions shall (i) be established utilizing the company's available experience, to the extent it is relevant and statistically credible; or (ii) to the extent that company data is not available, relevant, or statistically credible, be established utilizing other relevant, statistically credible experience.
  - d. Provide margins for uncertainty, including adverse deviation and estimation error, such that the greater the uncertainty, the larger the margin and resulting reserve.
- (2) A company using a principle-based valuation for one or more policies or contracts subject to this subsection as specified in the valuation manual shall do the following:
- a. Establish procedures for corporate governance and oversight of the actuarial valuation function consistent with those described in the valuation manual.
  - b. Provide to the Commissioner and the board of directors an annual certification of the effectiveness of the internal controls with respect to the principle-based valuation. Such controls shall be designed to assure that all material risks inherent in the liabilities and associated assets

subject to such valuation are included in the valuation and that valuations are made in accordance with the valuation manual. The certification shall be based on the controls in place as of the end of the preceding calendar year.

- c. Develop, and file with the Commissioner upon request, a principle-based valuation report that complies with standards prescribed in the valuation manual.

(o) A company shall submit mortality, morbidity, policyholder behavior, or expense experience and other data as prescribed in the valuation manual.

(p) The confidentiality of documents, materials, and other information provided to the Commissioner under this section shall be maintained as described in this subsection:

- (1) For purposes of this subsection, "confidential information" shall include all of the following:

- a. A memorandum in support of an opinion submitted under subsection (i) or (j1) of this section and any other documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by or disclosed to the Commissioner or any other person in connection with such memorandum.
- b. All documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by or disclosed to the Commissioner or any other person in the course of an examination made under subdivision (6) of subsection (m) of this section; provided, however, that if an examination report or other material prepared in connection with an examination made under the Examination Law (G.S. 58-2-131 through G.S. 58-2-134) is not held as private and confidential information under the Examination Law, an examination report or other material prepared in connection with an examination made under subdivision (6) of subsection (m) of this section shall not be "confidential information" to the same extent as if such examination report or other material had been prepared under the Examination Law.
- c. Any reports, documents, materials, and other information developed by a company in support of, or in connection with, an annual certification by the company under sub-subdivision (2)b. of subsection (n) of this section evaluating the effectiveness of the company's internal controls with respect to a principle-based valuation and any other documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by or disclosed to the Commissioner or any other person in connection with such reports, documents, materials, and other information.
- d. Any principle-based valuation report developed under sub-subdivision (2)c. of subsection (n) of this section and any other documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by

or disclosed to the Commissioner or any other person in connection with such report.

- e. Any documents, materials, data, and other information submitted by a company under subsection (o) of this section (collectively, "experience data") and any other documents, materials, data, and other information, including, but not limited to, all working papers, and copies thereof, created or produced in connection with such experience data, in each case that includes any potentially company-identifying or personally identifiable information, that is provided to or obtained by the Commissioner (together with any "experience data," the "experience materials") and any other documents, materials, data, and other information, including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by or disclosed to the Commissioner or any other person in connection with such experience materials.
- (2) Except as provided in this subsection, a company's confidential information is confidential by law and privileged, shall not be subject to or considered public record under G.S. 58-2-100 or Chapter 132 of the General Statutes, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the Commissioner is authorized to use the confidential information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties.
- (3) Neither the Commissioner nor any person who received confidential information while acting under the authority of the Commissioner shall be permitted or required to testify in any private civil action concerning any confidential information.
- (4) In order to assist in the performance of the Commissioner's duties, the Commissioner may share confidential information (i) with other state, federal, and international regulatory agencies and with the NAIC and its affiliates and subsidiaries, and (ii) in the case of confidential information specified in sub-subdivisions (1)a. and (1)d. of this subsection only, with the Actuarial Board for Counseling and Discipline or its successor upon request stating that the confidential information is required for the purpose of professional disciplinary proceedings and with state, federal, and international law enforcement officials; in the case of (i) and (ii), provided that such recipient agrees, and has the legal authority to agree, to maintain the confidentiality and privileged status of such documents, materials, data, and other information in the same manner and to the same extent as required for the Commissioner.
- (5) The Commissioner may receive documents, materials, data, and other information, including otherwise confidential and privileged documents, materials, data, or information, from the NAIC and its affiliates and subsidiaries, from regulatory or law enforcement officials of other foreign

or domestic jurisdictions and from the Actuarial Board for Counseling and Discipline or its successor and shall maintain as confidential or privileged any document, material, data, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or other information.

- (6) The Commissioner may enter into agreements governing the sharing and use of information consistent with this subsection.
- (7) No waiver of any applicable privilege or claim of confidentiality in the confidential information shall occur as a result of disclosure to the Commissioner under this subsection or as a result of sharing as authorized in subdivision (4) of this subsection.
- (8) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subsection shall be available and enforced in any proceeding in, and in any court of, this State.
- (9) In this subsection, "regulatory agency," "law enforcement agency," and the "NAIC" include, but are not limited to, their employees, agents, consultants, and contractors.
- (10) Notwithstanding subdivisions (2) through (9) of this subsection, confidential information specified in sub-subdivisions (1)a. and (1)d. of this subsection may be subject to subpoena for the purpose of defending an action seeking damages from the appointed actuary submitting the related memorandum in support of an opinion submitted under subsection (i) or (j1) of this section or a principle-based valuation report developed under sub-subdivision (2)c. of subsection (n) of this section by reason of an action required by this section or by rules promulgated by the Commissioner. Such confidential information may otherwise be released by the Commissioner with the written consent of the company. Once any portion of a memorandum in support of an opinion submitted under subsection (i) or (j1) of this section or a principle-based valuation report developed under sub-subdivision (2)c. of subsection (n) of this section is cited by the company in its marketing or is publicly volunteered to or before a governmental agency other than a state insurance department or is released by the company to the news media, all portions of such memorandum or report shall no longer be confidential.

(q) The Commissioner may exempt specific product forms or product lines of a domestic company that is licensed and doing business only in this State from the requirements of subsection (m) of this section, provided (i) the Commissioner has issued an exemption in writing to the company and has not subsequently revoked the exemption in writing and (ii) the company computes reserves using assumptions and methods used prior to the operative date of the valuation manual in addition to any requirements established by the Commissioner by rule. For any company granted an exemption under

this subsection, the following subsections of this section shall be applicable: (c), (d), (d1), (e), (f), (g), (h), (i), (j), (j1), (j2), and (k), excluding any references to subsection (m) found therein.

(r) The Department shall have full authority to enter into contracts or other agreements with the National Association of Insurance Commissioners or any other state, entity, or person to fulfill the requirements of this section. Such contracts shall not be subject to Articles 3, 3C, and 8 of Chapter 143 of the General Statutes or any rules and procedures adopted under those Articles concerning procurement, contracting, and contract review. (1945, c. 379; 1959, c. 484, s. 1; 1961, c. 255, ss. 1-3; 1963, c. 791, ss. 1, 2; 1975, c. 603, s. 1; 1979, c. 409, ss. 1-6; 1981, c. 761, ss. 1-5; 1985, c. 666, s. 46; 1991, c. 720, s. 19; 1993, c. 452, ss. 52-56; 1999-219, s. 10; 2001-334, s. 17.1; 2007-127, ss. 17, 18; 2015-281, ss. 1, 4.)

#### **§ 58-58-51. NAIC valuation manual operative date.**

(a) As used in the section, "valuation manual" means the manual of valuation instructions adopted by the NAIC or as subsequently amended.

(b) The operative date of the valuation manual is January 1 of the first calendar year that begins following the first July 1 as of which all of the following have occurred:

- (1) The valuation manual has been adopted by the NAIC by an affirmative vote of at least 42 members, or three-fourths of the members voting, whichever is greater.
- (2) The model Standard Valuation Law, as amended by the NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by states representing more than seventy-five percent (75%) of the direct premiums written as reported in the following annual statements submitted for 2008: life, accident and health annual statements; health annual statements; and fraternal annual statements.
- (3) The model Standard Valuation Law, as amended by the NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by at least 42 of the following 55 jurisdictions: the 50 states of the United States, American Samoa, the American Virgin Islands, the District of Columbia, Guam, and Puerto Rico. (2015-281, s. 3.)

#### **§ 58-58-55. Standard nonforfeiture provisions.**

(a) This section shall be known as the Standard Nonforfeiture Law for Life Insurance.

(b) In the case of policies issued on or after the operative date of this section, as defined in subsection (h), no policy of life insurance, except as stated in subsection (g), shall be delivered or issued for delivery in this State unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the Commissioner are at least as favorable to the defaulting or surrendering policyholder as are the minimum requirements hereinafter specified and are essentially in compliance with subsection (f1) of this section:

- (1) That, in the event of default in any premium payment after premiums have been paid for at least one full year in the case of ordinary insurance or three full years in the case of industrial insurance, the company will grant, upon proper request not later than 60 days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such amount as may be hereinafter specified. In lieu of such stipulated paid-up nonforfeiture benefit, the company may substitute, upon proper request not later than 60 days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit which provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits.
- (2) That, upon surrender of the policy within 60 days after the due date of any premium payment in default after premiums have been paid for at least three full years in the case of ordinary insurance or five full years in the case of industrial insurance, the company will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be hereinafter specified.
- (3) That a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than 60 days after the due date of the premium in default. Nothing herein shall prevent the use of an automatic premium loan provision.
- (4) That, if the policy shall have become paid up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the company will pay, upon surrender of the policy within 30 days after any policy anniversary, a cash surrender value of such amount as may be hereinafter specified.
- (5) In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. In the case of all other policies, a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any available under the policy on each policy anniversary either during the first 20 policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions

credited to the policy and that there is no indebtedness to the company on the policy.

- (6) A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of the state in which the policy is delivered; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein, a statement that such method of computation has been filed with the Commissioner in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

The company shall reserve the right to defer the payment of any cash surrender value for a period of six months after demand therefor with surrender of the policy.

(c) Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary, whether or not required by subsection (b), shall be an amount not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of (i) the then present value of the adjusted premiums as defined in subsection (e), corresponding to premiums which would have fallen due on and after such anniversary, and (ii) the amount of any indebtedness to the company on the policy.

Provided, however, that for any policy issued on or after the operative date of subdivision (4) of subsection (e) as defined therein, which provides supplemental life insurance or annuity benefits at the option of the insured and for an identifiable additional premium by rider or supplemental policy provision, the cash surrender value referred to in the first paragraph of this subsection shall be an amount not less than the sum of the cash surrender value as defined in such paragraph for an otherwise similar policy issued at the same age without such rider or supplemental policy provision and the cash surrender value as defined in such paragraph for a policy which provides only the benefits otherwise provided by such rider or supplemental policy provision.

Provided, further, that for any family policy issued on or after the operative date of subdivision (4) of subsection (e) as defined therein, which defines a primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the spouse's age 71, the cash surrender value referred to in the first paragraph of this subsection shall be an amount not less than the sum of the cash surrender value as defined in such paragraph for an otherwise similar policy issued at the same age without such term

insurance on the life of the spouse and cash surrender value as defined in such paragraph for a policy which provides only the benefits otherwise provided by such term insurance on the life of the spouse.

Any cash surrender value available within 30 days after any policy anniversary under any policy paid up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefit, whether or not required by subsection (b), shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the company on the policy.

(d) Any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be at least equal to the cash surrender value then provided for by the policy or, if none is provided for, at least equal to that cash surrender value which would have been required by this section in the absence of the condition that premiums shall have been paid for at least a specified period.

(e) (1) This subdivision (1) of subsection (e) shall not apply to policies issued on or after the operative date of subdivision (4) of subsection (e) as defined therein. Except as provided in the third paragraph of this subdivision, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding any extra premiums charged because of impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of (i) the then present value of the future guaranteed benefits provided for by the policy; (ii) two percent (2%) of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy; (iii) forty percent (40%) of the adjusted premium for the first policy year; (iv) twenty-five percent (25%) of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less. Provided, however, that in applying the percentages specified in (iii) and (iv) above, no adjusted premium shall be deemed to exceed four percent (4%) of the amount of insurance or uniform amount equivalent thereto. The date of issue of a policy for the purpose of this subsection shall be the date as of which the rated age of the insured is determined.

In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this section shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy containing the same endowment benefit or benefits, if any, issued at the same age and for the

same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy, provided, however, that in the case of a policy providing a varying amount of insurance issued on the life of a child under age 10, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age 10 were the amount provided by such policy at age 10. The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (i) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (ii) the adjusted premiums for such term insurance, the foregoing items (i) and (ii) being calculated separately and as specified in the first two paragraphs of this subsection except that, for the purposes of (ii), (iii) and (iv) of the first such paragraph, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (ii) of this paragraph shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (i).

Except as otherwise provided in subdivisions (2) and (3) of this subsection, all adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the Commissioner's 1941 Standard Ordinary Mortality Table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured, and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half percent (3 ½%) per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may not be more than one hundred and thirty percent (130%) of the rates of mortality according to such applicable table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the Commissioner.

- (2) This subdivision (2) of subsection (e) shall not apply to ordinary policies issued on or after the operative date of subdivision (4) of subsection (e)

as defined therein. In the case of ordinary policies issued on or after the operative date of this subdivision (2) as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioner's 1958 Standard Ordinary Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided that such rate of interest shall not exceed three and one-half percent (3 ½%) per annum except that a rate of interest not exceeding four percent (4%) per annum may be used for policies issued on or after July 1, 1975, and prior to April 19, 1979, and a rate of interest not exceeding five and one-half percent (5 ½%) per annum may be used for policies issued on or after April 19, 1979, and, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than six years younger than the actual age of the insured; provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioner's 1958 Extended Term Insurance Table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the Commissioner.

After May 12, 1959, any company may file with the Commissioner a written notice of its election to comply with the provisions of this subdivision (2) after a specified date before January 1, 1966. After the filing of such notice, then upon such specified date (which shall be the operative date of this subdivision (2) for such company), this subdivision (2) shall become operative with respect to the ordinary policies thereafter issued by such company. If a company makes no such election, the operative date of this subdivision (2) for such company shall be January 1, 1966.

- (3) This subdivision (3) of subsection (e) shall not apply to industrial policies issued on or after the operative date of subdivision (4) of subsection (e) as defined therein. In the case of industrial policies issued on or after the operative date of this subdivision (3) as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioner's 1961 Standard Industrial Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided that such rate of interest shall not exceed three and one-half percent (3 ½%) per annum except that a rate of interest not exceeding four percent (4%) per annum may be used for policies issued on or after July 1, 1975, and prior

to April 19, 1979, and a rate of interest not exceeding five and one-half percent (5 ½%) per annum may be used for policies issued on or after April 19, 1979; provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioner's 1961 Industrial Extended Term Insurance Table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the Commissioner.

After June 11, 1963, any company may file with the Commissioner a written notice of its election to comply with the provisions of this subdivision (3) after a specified date before January 1, 1968. After the filing of such notice, then upon such specified date (which shall be the operative date of this subdivision (3) for such company), this subdivision (3) shall become operative with respect to the industrial policies thereafter issued by such company. If a company makes no such election, the operative date of this subdivision (3) for such company shall be January 1, 1968.

- (4) a. This subdivision shall apply to all policies issued on or after the operative date of this subdivision (4) of subsection (e) as defined herein. Except as provided in paragraph g of this subdivision, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of the policy, of all adjusted premiums shall be equal to the sum of (i) the then present value of the future guaranteed benefits provided for by the policy; (ii) one percent (1%) of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years; and (iii) one hundred twenty-five percent (125%) of the nonforfeiture net level premium as hereinafter defined. Provided, however, that in applying the percentage specified in (iii) above no nonforfeiture net level premium shall be deemed to exceed four percent (4%) of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years. The date of issue of a policy for the purpose of this subdivision shall be the date as of which the rated age of the insured is determined.

- b. The nonforfeiture net level premium shall be equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one per annum payable on the date of issue of the policy and on each anniversary of such policy on which a premium falls due.
- c. In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values shall initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any such change in the benefits or premiums the future adjusted premiums, nonforfeiture net level premiums and present values shall be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.
- d. Except as otherwise provided in paragraph g of this subdivision, the recalculated future adjusted premiums for any such policy shall be such uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards, and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all such future adjusted premiums shall be equal to the excess of (A) the sum of (i) the then present value of the then future guaranteed benefits provided for by the policy and (ii) the additional expense allowance, if any, over (B) the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.
- e. The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall be the sum of (i) one percent (1%) of the excess, if positive, of the average amount of insurance at the beginning of each of the first 10 policy years subsequent to the change over the average amount of insurance prior to the change at the beginning of each of the first 10 policy years subsequent to the time of the most recent previous change, or, if there has been no previous change, the date of issue of the policy; and (ii) one hundred twenty-five percent (125%) of the increase, if positive, in the nonforfeiture net level premium.
- f. The recalculated nonforfeiture net level premium shall be equal to the result obtained by dividing (A) by (B) where
  - (A) Equals the sum of
    - (i) The nonforfeiture net level premium applicable prior to the change times the present value of an annuity of one

- per annum payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred, and
    - (ii) The present value of the increase in future guaranteed benefits provided for by the policy, and
  - (B) Equals the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.
- g. Notwithstanding any other provisions of this subdivision to the contrary, in the case of a policy issued on a substandard basis which provides reduced graded amounts of insurance so that, in each policy year, such policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis which provides higher uniform amounts of insurance, adjusted premiums and present values for such substandard policy may be calculated as if it were issued to provide such higher uniform amounts of insurance on the standard basis.
- h. All adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of (i) the Commissioner's 1980 Standard Ordinary Mortality Table or (ii) at the election of the company for any one or more specified plans of life insurance, the Commissioner's 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; shall for all policies of industrial insurance be calculated on the basis of the Commissioner's 1961 Standard Industrial Mortality Table; and shall for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this subdivision for policies issued in that calendar year. Provided, however, that:
  1. At the option of the company, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this subdivision, for policies issued in the immediately preceding calendar year.
  2. Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by subsection (b), shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any.
  3. A company may calculate the amount of any guaranteed paid-up nonforfeiture benefit including any paid-up additions under the policy on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.
  4. In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a

nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioner's 1980 Extended Term Insurance Table for policies of ordinary insurance and not more than the Commissioner's 1961 Industrial Extended Term Insurance Table for policies of industrial insurance.

5. For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the aforementioned tables.
6. For policies issued prior to the operative date of the valuation manual, which is defined in G.S. 58-58-51, any Commissioners Standard ordinary mortality tables, adopted after 1980 by the NAIC, that are approved by regulation promulgated by the Commissioner for use in determining the minimum nonforfeiture standard may be substituted for the Commissioner's 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or for the Commissioner's 1980 Extended Term Insurance Table. For policies issued on or after the operative date of the valuation manual, the valuation manual shall provide the Commissioners Standard mortality table for use in determining the minimum nonforfeiture standard that may be substituted for the Commissioners 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or for the Commissioners 1980 Extended Term Insurance Table. If the Commissioner approves by regulation any Commissioners Standard ordinary mortality table adopted by the NAIC for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual, then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual.
7. For policies issued prior to the operative date of the valuation manual, any Commissioners Standard industrial mortality tables, adopted after 1980 by the NAIC, that are approved by regulation promulgated by the Commissioner for use in determining the minimum nonforfeiture standard may be substituted for the Commissioner's 1961 Standard Industrial Mortality Table or the Commissioner's 1961 Industrial Extended Term Insurance Table. For policies issued on or after the operative date of the valuation manual, the valuation manual shall provide the Commissioners Standard mortality table for use in determining the minimum nonforfeiture standard that may be substituted for the Commissioners 1961 Industrial Extended Term Insurance Table. If the Commissioner approves by regulation any Commissioners Standard industrial mortality table adopted by the NAIC for use in determining the minimum

nonforfeiture standard for policies issued on or after the operative date of the valuation manual, then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual.

- i. For policies issued prior to the operative date of the valuation manual, the nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred and twenty-five percent (125%) of the calendar year statutory valuation interest rate for such policy as defined in the Standard Valuation Law, rounded to the nearer one quarter of one percent ( $1/4\%$ ), but not less than four percent (4%). For policies issued on or after the operative date of the valuation manual, the nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be provided by the valuation manual.

(e1) In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance which is of such a nature that minimum values cannot be determined by the methods described in subsections (b), (c), (d), or (e) herein, then:

- (1) The Commissioner must be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by subsections (b), (c), (d), or (e) herein;
- (2) The Commissioner must be satisfied that the benefits and the pattern of premiums of that plan are not such as to mislead prospective policyholders or insureds;
- (3) The cash surrender values and paid-up nonforfeiture benefits provided by such plan must not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this Standard Nonforfeiture Law, as determined by regulations promulgated by the Commissioner;
- (4) Notwithstanding any other provision in the laws of this State, any policy, contract, or certificate providing life insurance under any such plan must be affirmatively approved by the Commissioner before it can be marketed, issued, delivered, or used in this State.

(f) Any cash surrender value and any paid-up nonforfeiture benefit, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. Any values referred to in subsections (c), (d) and (e) may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the amounts used to provide such additions. Notwithstanding the provisions of Section 3 [subsection (c)], additional benefits payable (i) in the event of death or dismemberment by accident or accidental means, (ii) in the event of total and permanent disability, (iii) as reversionary

annuity or deferred reversionary annuity benefits, (iv) as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply, (v) as term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is 26, is uniform in amount after the child's age is one, and has not become paid up by reason of the death of a parent of the child, and (vi) as other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

(f1) This subsection, in addition to all other applicable subsections of this section, shall apply to all policies issued on or after January 1, 1985. Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary shall be in an amount which does not differ by more than two-tenths of one percent ( $2/10$  of 1%) of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years, from the sum of (1) the greater of zero and the basic cash value hereinafter specified and (2) the present value of any existing paid-up additions less the amount of any indebtedness to the company under the policy.

The basic cash value shall be equal to the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the company, if there had been no default, less the then present value of the nonforfeiture factors, as hereinafter defined, corresponding to premiums which would have fallen due on and after such anniversary. Provided, however, that the effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in subsection (c) or (e)(1), whichever is applicable, shall be the same as are the effects specified in subsection (c) or (e)(1), whichever is applicable, on the cash surrender values defined in that subsection.

The nonforfeiture factor for each policy year shall be an amount equal to a percentage of the adjusted premium for the policy year, as defined in subsection (e)(1) or (e)(4), whichever is applicable. Except as is required by the next succeeding sentence of this paragraph, such percentage:

- (1) Must be the same percentage for each policy year between the second policy anniversary and the later of (i) the fifth policy anniversary and (ii) the first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least two-tenths of one percent ( $2/10$  of 1%) of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years; and

- (2) Must be such that no percentage after the later of the two policy anniversaries specified in the preceding item (1) may apply to fewer than five consecutive policy years.

Provided, that no basic cash value may be less than the value which would be obtained if the adjusted premiums for the policy, as defined in subsection (e)(1) or (e)(4), whichever is applicable, were substituted for the nonforfeiture factors in the calculation of the basic cash value.

All adjusted premiums and present values referred to in this subsection shall for a particular policy be calculated on the same mortality and interest bases as are used in demonstrating the policy's compliance with the other subsections of this section. The cash surrender values referred to in this subsection shall include any endowment benefits provided for by the policy.

Any cash surrender value available other than in the event of default in a premium payment due on a policy anniversary, and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment shall be determined in manners consistent with the manners specified for determining the analogous minimum amounts in subsections (b), (c), (d), (e)(4), and (f). The amounts of any cash surrender values and of any paid-up nonforfeiture benefits granted in connection with additional benefits such as those listed as items (i) through (vi) in subsection (f) shall conform with the principles of this subsection (f1).

- (g) The provisions of this section shall not apply to any of the following:
  - (1) Industrial sick benefit insurance as defined in Articles 1 through 64 of this Chapter,
  - (2) Reinsurance,
  - (3) Group insurance,
  - (4) Pure endowment,
  - (5) Annuity or reversionary annuity contract,
  - (6) Term policy of uniform amount, which provides no guaranteed nonforfeiture or endowment benefits, or renewal thereof, of 20 years or less, for which uniform premiums are payable during the entire term of the policy,
  - (7) Term policy of decreasing amount, which provides no guaranteed nonforfeiture or endowment benefits, on which each adjusted premium, calculated as specified in subsection (e), is less than the adjusted premium so calculated, on a term policy of uniform amount, or renewal thereof, which provides no guaranteed nonforfeiture or endowment benefits, issued at the same age and for the same initial amount of insurance and for a term of 20 years or less expiring before age 71, for which uniform premiums are payable during the entire term of the policy,
  - (8) Policy, which provides no guaranteed nonforfeiture or endowment benefits, for which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at the beginning of any policy year, calculated as specified in subsections (c), (d) and (e), exceeds two and

one-half percent (2 ½%) of the amount of insurance at the beginning of the same policy year, nor

- (9) Policy which shall be delivered outside this State through an agent or other representative of the company issuing the policy.

For purposes of determining the applicability of this section, the age at expiry for a joint term life insurance policy shall be the age at expiry of the oldest life.

(h) After March 6, 1945, any company may file with the Commissioner a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1950. After the filing of such notice then upon such specified date (which shall be the operative date for such company) this section shall become operative with respect to the policies thereafter issued by such company. If a company makes no such election, the operative date of this section for such company shall be January 1, 1950.

(i) For any single premium whole life or endowment insurance policy subject to subdivisions (e)(2) and (e)(3) of this section, a rate of interest not exceeding six and one-half percent (6 ½%) per annum may be used. (1945, c. 379; 1959, c. 484, s. 2; 1961, c. 255, ss. 4-7; 1963, c. 791, ss. 3, 4; 1975, c. 603, ss. 2, 3; 1979, c. 409, ss. 7-9; 1981, c. 761, ss. 6-14; 1991, c. 720, ss. 19, 31; 1993, c. 452, ss. 57-59; 2015-281, s. 2.)

**§ 58-58-60:** Repealed by Session Laws 2003-144, s. 2, effective October 1, 2004.

**§ 58-58-61. Standard nonforfeiture law for individual deferred annuities.**

(a) Title. – This section is and may be cited as the Standard Nonforfeiture Law for Individual Deferred Annuities.

(b) Applicability. – This section does not apply to any:

- (1) Reinsurance.
- (2) Group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as amended.
- (3) Premium deposit fund.
- (4) Variable annuity.
- (5) Investment annuity.
- (6) Immediate annuity.
- (7) Deferred annuity contract after annuity payments have commenced.
- (8) Reversionary annuity.
- (9) Contract delivered outside this State through an agent or other representative of the company issuing the contract.

(c) Nonforfeiture Requirements. – In the case of contracts issued on or after the operative date of this section as defined in subsection (o) of this section, no contract of annuity, except as stated in subsection (b) of this section, shall be delivered or issued for delivery in this State unless it contains in substance the following provisions, or corresponding provisions that in the opinion of the Commissioner are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract:

- (1) That upon cessation of payment of considerations under a contract, or upon the written request of the contract owner, the company shall grant a paid-up annuity benefit on a plan stipulated in the contract of the value specified in subsections (g), (h), (i), (j), and (l) of this section.
- (2) If a contract provides for a lump sum settlement at maturity or at any other time, that upon surrender of the contract at or before the commencement of any annuity payments, the company shall pay in lieu of a paid-up annuity benefit a cash surrender benefit of the amount specified in subsections (g), (h), (j), and (l) of this section. The company may reserve the right to defer the payment of the cash surrender benefit for a period not to exceed six months after demand for the payment with surrender of the contract after making written request and receiving written approval of the Commissioner. The request shall address the necessity and equitability to all policyholders of the deferral.
- (3) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender, or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of the benefits.
- (4) A statement that any paid-up annuity, cash surrender, or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which the benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract, or any prior withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this subsection, a deferred annuity contract may provide that if no considerations have been received under the contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from prior considerations paid would be less than twenty dollars (\$20.00) monthly, the company may at its option terminate the contract by payment in cash of the then-present value of the portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by this payment shall be relieved of any further obligation under the contract.

(d) Minimum Values. – The minimum values specified in subsections (g), (h), (i), (j), and (l) of this section of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section. The minimum nonforfeiture amount at any time at or before the commencement of any annuity payments shall be equal to an accumulation up to that time at rates of interest as indicated in subsection (e) of this section of the net considerations, as hereinafter defined, paid before that time, decreased by the sum of the following:

- (1) Any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest as indicated in subsection (e) of this section.
- (2) An annual contract charge of fifty dollars (\$50.00), accumulated at rates of interest as indicated in subsection (e) of this section.
- (3) Any premium tax paid by the company for the contract, accumulated at rates of interest as indicated in subsection (e) of this section.

- (4) The amount of any indebtedness to the company on the contract, including interest due and accrued.

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount equal to eighty-seven and one-half percent (87 1/2%) of the gross considerations credited to the contract during that contract year.

(e) The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of three percent (3%) per annum and the following, which shall be specified in the contract if the interest rate will be reset:

- (1) The five-year Constant Maturity Treasury Rate reported by the Federal Reserve as of a date, or average over a period, rounded to the nearest one-twentieth of one percent (0.05%), specified in the contract no longer than 15 months before the contract issue date or redetermination date under subdivision (4) of this subsection.
- (2) Reduced by 125 basis points.
- (3) Where the resulting interest guarantee is not less than one percent (1%).
- (4) The interest rate shall apply for an initial period and may be redetermined for additional periods. The redetermination date, basis, and period, if any, shall be stated in the contract. The basis is the date or average over a specified period that produces the value of the five-year Constant Maturity Treasury Rate to be used at each redetermination date.

(f) During the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in subdivision (e)(2) of this section by up to an additional 100 basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each subsequent redetermination date, of the additional reduction shall not exceed the market value of the benefit. The Commissioner may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. Absent a demonstration that is acceptable to the Commissioner, the Commissioner may disallow or limit the additional reduction. The Commissioner may adopt rules to implement the provisions of this subsection and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts for which the Commissioner determines adjustments are justified.

(g) Computation of Present Value. – Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Present value shall be computed using the mortality table, if any, and the interest rates specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

(h) Calculation of Cash Surrender Value. – For contracts that provide cash surrender benefits, the cash surrender benefits available before maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit that would be provided under the contract at maturity arising from considerations paid before the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than one percent (1%) higher than the interest rate specified in the contract for accumulating the net considerations to determine maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event shall any cash

surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

(i) **Calculation of Paid-Up Annuity Benefits.** – For contracts that do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time before maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid before the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, the present value being calculated for the period before the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine maturity value, and increased by any additional amounts credited by the company to the contract. For contracts that do not provide any death benefits before the commencement of any annuity payments, present values shall be calculated on the basis of the interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

(j) **Maturity Date.** – For the purpose of determining the benefits calculated under subsections (h) and (i) of this section, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be the latest date for which election is permitted by the contract but not later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

(k) **Disclosure of Limited Death Benefits.** – A contract that does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount before the commencement of any annuity payments shall include a statement in a prominent place in the contract that those benefits are not provided.

(l) **Inclusion of Lapse of Time Considerations.** – Any paid-up annuity, cash surrender, or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

(m) **Proration of Values; Additional Benefits.** – For a contract that provides within the same contract, by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of subsections (g), (h), (i), (j), and (l) of this section, additional benefits payable in the event of total and permanent disability, as reversionary annuity or deferred reversionary annuity benefits, or as other policy benefits additional to life insurance, endowment, and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits that may be required by this section. The inclusion of those benefits shall not be required in any paid-up benefits, unless the additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits.

(n) **Rules.** – The Commissioner may adopt rules to implement the provisions of this section.

(o) Effective Date. – On and after October 1, 2003, a company may elect to apply the provisions of this section to annuity contracts on a contract form-by-contract form basis before October 1, 2004. In all other instances, this section shall become operative with respect to annuity contracts issued by the company on and after October 1, 2004. (2003-144, s. 1.)

**§ 58-58-65. Reinsurance of companies regulated.**

The receiver of any life insurance company organized under the laws of this State, when the assets of the company are sufficient for that purpose, and the consent of two thirds of its policyholders has been secured in writing, may reinsure all the policy obligations of such company in some other solvent life insurance company, or, when the assets are insufficient to secure the reinsurance of all the policies in full, he may reinsure such a percentage of each and every policy outstanding as the assets will secure; but there must be no preference or discrimination as against any policyholder, and the contract for such reinsurance by the receiver must be approved by the Commissioner before it has effect. (1899, c. 54, s. 58; 1903, c. 536, s. 9; Rev., s. 4778; C.S., s. 6462; 1945, c. 379; 1991, c. 720, s. 61.)

Part 3. Insurable Interests and Other Rights.

**§ 58-58-70. Insurable interest as between stockholders, partners, etc.**

Where two or more persons have heretofore contracted or hereafter contract with one another for the purchase, at the death of one, by the survivor or survivors, of the stock, share or interest of the deceased in any corporation, partnership or business association of any kind, the person or persons making the contract of purchase shall be deemed to have, and are hereby declared to have, an insurable interest in the life or lives of the person or persons contracting to sell. (1941, c. 201; 1969, c. 751, s. 44.)

**§ 58-58-75. Insurable interest in life and physical ability of employee or agent.**

(a) An employer, whether a partnership, joint venture, business trust, mutual association, corporation, any other form of business organization, or one or more individuals, or any religious, educational, or charitable corporation, institution or body, has an insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of an employee for the benefit of such employer. Any principal shall have a life insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of an agent for the benefit of such principal.

(b) An employee described in subsection (a) of this section shall be insured for the benefit of an employer described in subsection (a) of this section only if the employee receives written notification from the insurer of the existence of the coverage or that coverage will be purchased. The notice shall be provided to the employee in connection with the application for coverage or within 30 days after the effective date of the coverage and shall include a statement that the employer may maintain the life insurance coverage on the employee even after employment is terminated.

(c) For nonkey or nonmanagerial employees, the aggregate amount of coverage shall be reasonably related to the benefits provided to the employees in the aggregate.

(d) With respect to employer-provided pension and welfare plans, the life insurance coverage purchased to finance the plans may only cover the lives of those employees and retirees who, at the time their lives were first insured under the plan, either are participants, or would be

eligible to participate, upon the satisfaction of age, service, or similar eligibility criteria in the plan. (1951, c. 283, s. 1; 1957, c. 1086; 2005-234, s. 2.)

**§ 58-58-80. Insurable interest in life and physical ability of partner.**

Any partner has an insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of any other partner or partners who are members of the same partnership for his benefit, either alone or jointly with another partner or partners of the same partnership. A partnership has a like insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of one or more partners of the partnership. (1951, c. 283, s. 2.)

**§ 58-58-85. Insurable interest in life of person covered by pension plan.**

A trustee under a written document providing for a pension plan for payments of money or delivery of other benefits to be made to persons eligible to receive them under the terms and provisions of such written document shall be deemed to have and is hereby declared to have an insurable interest in the lives of any person or persons covered by the pension plan, to the extent that contracts or policies of insurance are in conformity with and in furtherance of the purposes of the pension plan. (1951, c. 283, s. 2 1/2.)

**§ 58-58-86. Insurable interest of charitable organizations.**

(a) If an organization described in section 501(c)(3) of the Internal Revenue Code purchases or receives by assignment, before, on, or after the effective date of this section, life insurance on an insured who consents to the purchase or assignment, the organization is deemed to have an insurable interest in the insured person's life.

(b) Expired effective October 1, 2007, pursuant to Session Laws 2004-124, s. 32F.2. (1991, c. 644, s. 2; 2004-124, ss. 32F.1, 32F.2.)

**§ 58-58-90. Construction.**

G.S. 58-58-75, 58-58-80, 58-58-85, and 58-58-86 do not limit or abridge any insurable interest or right to insure now existing at common law or by statute, and shall be construed liberally to sustain insurable interest, whether as a declaration of existing law or as an extension of or addition to existing law. (1951, c. 283, s. 3; 1991, c. 644, s. 3.)

**§ 58-58-95. Rights of beneficiaries.**

When a policy of insurance is effected by any person on his own life, or on another life in favor of some person other than himself having an insurable interest therein, the lawful beneficiary thereof, other than himself or his legal representatives, is entitled to its proceeds against the creditors and representatives of the person effecting the insurance. The person to whom a policy of life insurance is made payable may maintain an action thereon in his own name. A person may insure his or her own life for the sole use and benefit of his or her spouse, or children, or both, and upon his or her death the proceeds from the insurance shall be paid to or for the benefit of the spouse, or children, or both, or to a guardian, free from all claims of the representatives or creditors of the insured or his or her estate. Any insurance policy which insures the life of a person for the sole use and benefit of that person's spouse, or children, or both, shall not be subject to the claims of creditors of the insured during his or her lifetime, whether or not the policy reserves to the insured during his or her lifetime any or all rights provided for by the policy and whether or not

the policy proceeds are payable to the estate of the insured in the event the beneficiary or beneficiaries predecease the insured. (Const., Art. X, s. 7; 1899, c. 54, s. 59; Rev., ss. 4771, 4772; C.S., s. 6464; 1977, c. 518, s. 1.)

**§ 58-58-97. Provision of life insurance information upon notification of insured's death.**

(a) Any person licensed to practice funeral directing or any employee of a funeral establishment licensed under the provisions of Article 13A of Chapter 90 of the General Statutes providing funeral service, as that term is defined in G.S. 90-210.20, for a deceased person insured or believed to be insured under a contract of life insurance or under a group life insurance policy may request information regarding the deceased person's life insurance contracts by providing an insurer with (i) a copy of a notification of death filed pursuant to G.S. 130A-112, (ii) written authorization from the person or persons with legal authority to direct disposition of the deceased's body as prescribed under G.S. 90-210.124 or G.S. 130A-420, and (iii) in the case of a person covered or believed to be covered under a group life insurance policy, the affiliation of the deceased entitling them to coverage under the group life insurance policy. As soon as possible after receipt of the request, the life insurance company shall inform the person authorized by this section to make an inquiry of the following:

- (1) The existence of any contract insuring the life of the deceased person.
- (2) Any beneficiaries on record under any life insurance contract insuring the life of the deceased person.
- (3) The amount of any liens or loans outstanding on the policy.
- (4) The amount of benefits payable to the beneficiaries.
- (5) Whether the policy has been reinstated within the last 24 months.

The insurer shall provide a claim form to any person or assignee making the request.

(b) If any person making a written request under subsection (a) of this section who has provided all the information required by subsection (a) of this section does not receive a timely response from the insurer, then the person may refer the request to the Consumer Services Division of the Department, which shall treat the referral as a consumer complaint. The referral shall include all the information provided to the insurer under subsection (a) of this section as well as copies of all communications and information received from the insurer regarding the request for information.

(c) If the beneficiary of record under the life insurance contract or group life insurance policy is not the estate of the deceased, then any person authorized to request information under subsection (a) of this section shall make reasonable efforts to locate the beneficiaries within 100 hours of receiving information from the insurance carrier regarding any life insurance contracts or group life insurance policies and shall provide to all beneficiaries all documents and information obtained from the insurance carrier. The person obtaining the information also shall inform all beneficiaries in writing in bold print that "THE BENEFICIARY OF A LIFE INSURANCE POLICY HAS NO LEGAL DUTY OR OBLIGATION TO SPEND ANY OF THAT MONEY ON THE FUNERAL, DEBTS,

OR OBLIGATIONS OF THE DECEASED" and shall do so before discussing with the beneficiaries financial arrangements for burial of the deceased.

(d) Any licensee or employee of a funeral establishment licensed under Article 13A of Chapter 90 of the General Statutes who makes a false request for information under this section or fails to do that required by subsection (c) of this section shall be deemed guilty of fraud or misrepresentation in the practice of funeral service as defined in G.S. 90-210.25(e)(1)b. and unfit to practice funeral service.

(e) This section shall apply to life insurance companies as defined in G.S. 58-58-1 and to all contracts subject to the provisions of this Article. (2009-566, s. 23; 2011-229, s. 1.)

**§ 58-58-100. Minors may enter into insurance or annuity contracts and have full rights, powers and privileges thereunder.**

All minors in North Carolina of the age of 15 years and upwards shall have full power and authority to make contracts of insurance or annuity with any life insurance company authorized to do business in the State of North Carolina, either domestic or foreign, and to exercise all the powers, rights, and privileges of ownership conferred upon them under the terms of any and all such contracts applied for by and issued to them, and with full power to surrender, assign, modify, pledge, or change such contracts, and to receive any dividends thereon and generally to have the full power and authority in the premises that persons 18 years and upwards could and would have relative to any and all such contracts. (1945, c. 379; 1947, c. 721; 1971, c. 1231, s. 1.)

**§ 58-58-105. Renunciation.**

A beneficiary of a life insurance policy who did not possess the incidents of ownership under the policy at the time of death of the insured may renounce as provided in Chapter 31B of the General Statutes. (1975, c. 371, s. 5.)

**§ 58-58-110. Interest payments on death benefits.**

(a) Each insurer admitted to transact insurance in this State which, without the written consent of the beneficiary, fails or refuses to pay the death proceeds or death benefits in accordance with the terms of any policy providing a death benefit issued by it in this State within 30 days after receipt of satisfactory proof of loss because of the death, whether accidental or otherwise, of the insured shall pay interest, at a rate not less than the then current rate of interest on death proceeds left on deposit with the insurer computed from the date of the insured's death, on any moneys payable and unpaid after the expiration of the 30-day period. As used in this subsection, the phrase "satisfactory proof of loss because of the death" includes, but is not limited to, a certified copy of the death certificate; or a written statement by the attending physician at the time of death that contains the following information: (i) the name and address of the physician, who must be duly licensed to practice medicine in the United States; (ii) the name of the deceased; (iii) the date, time, and place of the death; and (iv) the immediate cause of the death.

(b) Within the meaning of this section, payment of proceeds or benefits shall be deemed to have been made on the date upon which a check, draft or other valid instrument equivalent to the payment of money was placed in the United States mails in a properly addressed, postpaid envelope, or, if not so posted, on the date of delivery of such instrument to the beneficiary.

(c) This section does not allow an insurer to withhold payment of money payable under any policy providing a death benefit to any beneficiary for a period longer than reasonably necessary to determine whether benefits are payable and to transmit the payment.

(d) This section shall not apply to policies of insurance issued prior to the effective date of this section to the extent that such policies contain specific provisions in conflict with this section. (1977, c. 395, s. 1; 1983, c. 749; 1985, c. 666, s. 45; 1991, c. 644, s. 8; 1995, c. 193, s. 46.)

**§ 58-58-115. Creditors deprived of benefits of life insurance policies except in cases of fraud.**

If a policy of insurance is effected by any person on his own life or on another life in favor of a person other than himself, or, except in cases of transfer with intent to defraud creditors, if a policy of life insurance is assigned or in any way made payable to any such person, the lawful beneficiary or assignee thereof, other than the insured or the person so effecting such insurance or the executor or administrator of such insured or of the person effecting such insurance, shall be entitled to its proceeds and avails against creditors and representatives of the insured and of the person effecting same, whether or not the right to change the beneficiary is reserved or permitted, and whether or not the policy is made payable to the person whose life is insured if the beneficiary or assignee shall predecease such person: Provided, that subject to the statute of limitations, the amount of any premiums for said insurance paid with the intent to defraud creditors, with interest thereon, shall inure to their benefit from the proceeds of the policy; but the company issuing the policy shall be discharged of all liability thereon by payment of its proceeds in accordance with its terms unless, before such payment, the company shall have written notice by or in behalf of the creditor, of a claim to recover for transfer made or premiums paid with intent to defraud creditors, with specifications of the amount claimed. (1931, c. 179, s. 1; 1947, c. 721.)

**§ 58-58-120. Notice of nonpayment of premium required before forfeiture.**

No life insurance corporation doing business in this State shall, within one year after the default in payment of any premium, installment, or interest, declare forfeited or lapsed any policy hereafter issued or renewed, except policies on which premiums are payable monthly or at shorter intervals and except group insurance contracts and term insurance contracts for one year or less, nor shall any such policy be forfeited or lapsed by reason of nonpayment, when due, of any premium, interest, or installment or any portion thereof required by the terms of the policy to be paid, within one year from the failure to pay such premium, interest, or installment, unless a written or printed notice stating the amount of such premium, interest, installment, or portion thereof due on such policy, the place where it shall be paid, and the person to whom the same is payable has been duly addressed and mailed, postage paid, to the person whose life is insured, or to the assignee or owner of the policy, or to the person designated in writing by such insured, assignee or owner, if notice of the assignment has been given to the corporation, at his or her last known post-office address in this State, by the corporation or by any officer thereof or person appointed by it to collect such premium, at least 15 and not more than 45 days prior to the day when the same is payable, as regards policies which do not contain a provision for grace or are not entitled to grace in the payment of premiums and at least five and not more than 45 days prior to the day when the same is payable as regards policies which do contain a provision for grace or are entitled to grace in the payment of premiums. The notice shall also state that unless such premium, interest, installment, or portion thereof then due shall be paid to the corporation or to the duly appointed agent or person authorized to collect such premium, by or before the day it falls due, the policy and all payments thereon will become forfeited and void, except as to the right to a surrender value or paid-up policy,

as in the contract provided. If the payment demanded by such notice shall be made within its time limit therefor, it shall be taken to be in full compliance with the requirements of the policy in respect to the time of such payment; and no such policy shall in any case be forfeited or declared forfeited or lapsed until the expiration of 30 days after the mailing of such notice. The affidavit of any officer, clerk, or agent of the corporation, or of anyone authorized to mail such notice, that the notice required by this section has been duly addressed and mailed by the corporation issuing such policy, shall be presumptive evidence that such notice has been duly given. No action shall be maintained to recover under a forfeited policy unless the same is instituted within three years from the day upon which default was made in paying the premium, installment, interest, or portion thereof for which it is claimed that forfeiture ensued. (1909, c. 884; C.S., s. 6465; 1929, c. 308, s. 1; 1931, c. 317; 1945, c. 379.)

#### Part 4. Miscellaneous Provisions.

##### **§ 58-58-125. Minimum premium rates for assessment life insurance companies.**

No assessment life insurance corporation, organization or association of any kind issuing policies or contracts upon the life of any resident of this State shall hereafter be organized or licensed by the Commissioner unless such corporation, organization or association adopt premium rates based upon the attained age of the assured at the time of issuance of the contract and such rates shall not be less than those fixed by the American Experience Table of Mortality or any other recognized table of mortality approved by the Commissioner. Nothing contained in this section shall be construed to affect burial associations regulated under G.S. 143B-472 through 143B-472.28 or railroad burial associations. (1939, c. 161; 1991, c. 720, ss. 4, 32.)

##### **§ 58-58-130. Distribution of surplus in mutual companies.**

Every life insurance company doing business in this State upon the principle of mutual insurance, or the members of which are entitled to share in the surplus funds thereof, may distribute the surplus annually, or once in two, three, four, or five years, as its directors determine. No payments shall be made to policyholders by way of dividends unless the company possesses admitted assets in the amount of such payments in excess of its capital and/or minimum required surplus and all other liabilities. (1903, c. 536, s. 10; Rev., s. 4776; C.S., s. 6466; 1945, c. 379.)

##### **§ 58-58-135. "Group life insurance" defined.**

No policy of group life insurance shall be delivered in this State unless it conforms to one of the following descriptions:

- (1) A policy issued to an employer, or to the trustee of a fund established by an employer, which employer or trustee shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer subject to the following requirements:
  - a. The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such

affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. The term "employer" as used herein may be deemed to include any county, municipality, or the proper officers, as such, of any unincorporated municipality or any department, division, agency, instrumentality or subdivision of a county, unincorporated municipality or municipality. In all cases where counties, municipalities or unincorporated municipalities or any officer, agent, division, subdivision or agency of the same have heretofore entered into contracts and purchased group life insurance for their employees, such transactions, contracts and insurance and the purchase of the same is hereby approved, authorized and validated.

- b. The premium for the policy shall be paid either wholly or partly from the employer's funds or funds contributed by him, or wholly or partly from funds contributed by the insured employees, or by both. A policy on which all or part of the premium is to be derived from funds contributed by the insured employees may be placed in force provided the group is structured on an actuarially sound basis. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.
  - c. Repealed by Session Laws 2007-298, s. 7.6, effective October 1, 2007.
  - d. Repealed by Session Laws 1991 (Regular Session, 1992), c. 837, s. 6.
- (2) A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:
- a. The debtors eligible for insurance under the policy shall be all of the debtors of the creditor whose indebtedness is repayable in installments, or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness. The policy may provide that the term "debtors" shall include the debtors of one or more subsidiary corporations, and the debtors of one or more affiliated corporations, proprietors or partnerships if the business of the policyholder and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract or otherwise.
  - b. The premium for the policy shall be paid from the creditor's funds, from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors or identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless the group is

- structured on an actuarially sound basis. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.
- c. The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least 100 persons yearly, or may reasonably be expected to receive at least 100 new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than seventy-five percent (75%) of the new entrants become insured.
  - d. e. Repealed by Session Laws 1975, c. 660, s. 4.
- (3) A policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives or agents, subject to the following requirements:
- a. The members eligible for insurance under the policy shall be all of the members of the union, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union, or both.
  - b. The premium for the policy shall be paid either wholly or partly from the union's funds, or wholly or partly from funds contributed by the insured members specifically for their insurance, or by both. A policy on which all or part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force provided the group is structured on an actuarially sound basis. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.
  - c. The policy must cover at least 25 members at date of issue.
  - d. Repealed by Session Laws 1991 (Regular Session, 1992), c. 837, s. 6.
- (4) A policy issued to the trustee of a fund established by two or more employers in the same industry or kind of business or by two or more labor unions, which trustee shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:
- a. The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to memberships in the unions, or to both. The policy may provide that the term "employees" shall include the individual proprietor or partners if an employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include the trustee or the employees of the trustee, or both, if their duties

are principally connected with such trusteeship. The policy may provide that the term "employees" shall include retired employees.

- b. The premium for the policy shall be paid wholly or partly from funds contributed by the participating employer, labor union, or the insured persons.

If none of the premium paid by the participating employer or labor union is to be derived from funds contributed by the insured persons specifically for the insurance, all eligible employees of that particular participating employer or labor union must be insured, or all except any as to whom evidence of insurability is not satisfactory to the insurer.

If part of the premium paid by the participating employer or labor union is to be derived from funds contributed by the insured persons specifically for their insurance, coverage may be placed in force on employees of a participating employer or on members of a participating labor union provided the group is structured on an actuarially sound basis.

- c. The policy must cover at least 100 persons at date of issue.
- d. Repealed by Session Laws 1991 (Regular Session, 1992), c. 837, s. 6.

- (5) A policy issued to an association of persons having a common professional or business interest, which association shall be deemed the policyholder, to insure members of such association for the benefit of persons other than the association or any of its officials, representatives or agents, subject to the following requirements:

- a. Such association shall have had an active existence for at least two years immediately preceding the purchase of such insurance, was formed for purposes other than procuring insurance and does not derive its funds principally from contributions of insured members toward the payment of premiums for the insurance.
- b. The members eligible for insurance under the policy shall be all of the members of the association or all of any class or classes thereof determined by conditions pertaining to their employment, or the membership in the association, or both. The policy may provide that the term "members" shall include the employees of members, if their duties are principally connected with the member's business or profession.
- c. The premium for the policy shall be paid either wholly or partly from the association's funds, or wholly or partly from funds contributed by the insured members specifically for their insurance, or by both. No policy may be issued if the Commissioner finds that the rate of insured members' contributions will exceed the maximum rate customarily charged employees insured under like group life insurance policies issued in accordance with the provisions of subdivision (1). A policy on which all or part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force provided the group is structured on an actuarially sound basis. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must

- insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.
- d. The policy must cover at least 25 members at date of issue.
- e. Repealed by Session Laws 1991 (Regular Session, 1992), c. 837, s. 6.
- (5a) A policy issued to a group other than those described in subdivisions (1) through (5) of this section, subject to the following requirements:
  - a. Either of the following is true:
    - 1. The Commissioner has made the following findings:
      - I. The issuance of the group policy is not contrary to the best interest of the public.
      - II. The issuance of the group policy would result in economies of acquisition or administration.
      - III. The benefits are reasonable in relation to the premiums charged.
    - 2. Another state having requirements substantially similar to those contained in sub-sub-subdivision 1. of this sub-subdivision has made a determination that the requirements have been met.
  - b. The premium for the policy shall be paid from either the policyholder's funds or funds contributed by the covered persons, or from both.
  - c. An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer.
- (6) Notwithstanding the provisions of this section, or any other provisions of law to the contrary, a policy may be issued to the employees of the State or any other political subdivision where the entire amount of premium therefor is paid by such employees. (1925, c. 58, s. 1; 1931, c. 328; 1943, c. 597, s. 1; 1947, c. 834; 1951, c. 800; 1955, c. 1280; 1957, c. 998; 1959, c. 287; 1965, c. 869; 1971, c. 516; 1973, c. 249; 1975, c. 660, s. 4; 1977, c. 192, ss. 1-4; c. 835; 1987, c. 752, ss. 14-18; 1991 (Reg. Sess., 1992), c. 837, s. 6; 2007-298, s. 7.6; 2007-484, s. 43.5; 2011-215, s. 2.)

**§ 58-58-140. Group life insurance standard provisions.**

No policy of group life insurance shall be delivered in this State unless it contains in substance the following provisions, or provisions which in the Commissioner's opinion are more favorable to the persons insured, or at least as favorable to the persons insured and more favorable to the policyholder, provided, however, (i) that subdivisions (6) through (10) of this section do not apply to policies issued to a creditor to insure the creditor's debtors; (ii) that the standard provisions required for individual life insurance policies do not apply to group life insurance policies; and (iii) that if the group life insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions that in the Commissioner's opinion is or are equitable to the insured persons and to the policyholder, but nothing in this section requires group life insurance policies to contain the same nonforfeiture provisions that are required for individual life insurance policies:

- (1) A provision that the policyholder is entitled to a grace period of 31 days for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force, unless the policyholder has given the insurer written notice of discontinuance before the date of discontinuance

and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during the grace period.

- (2) A provision that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two years from its date of issue; and that no statement made by any person insured under the policy relating to that person's insurability shall be used in contesting the validity of the insurance with respect to which the statement was made after the insurance has been in force before the contest for a period of two years during the person's lifetime nor unless it is contained in a written instrument signed by the person.
- (3) A provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be considered representations and not warranties; and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to the person or to the person's beneficiary.
- (4) A provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of the person's coverage.
- (5) A provision specifying an equitable adjustment of premiums or benefits, or both, to be made if the age of a person insured has been misstated; the provision to contain a clear statement of the method of adjustment to be used.
- (6) A provision that any sum becoming due because of the death of the person insured shall be payable to the beneficiary designated by the person insured, subject to the provisions of the policy if there is no designated beneficiary as to all or any part of the sum living at the death of the person insured, and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of the sum not exceeding two hundred fifty dollars (\$250.00) to any person appearing to the insurer to be equitably entitled thereto by having incurred funeral or other expenses incident to the last illness or death of the person insured.
- (7) A provision that the insurer will issue to the policyholder, for delivery to each person insured, an individual certificate setting forth a statement as to the insurance protection to which the person is entitled, to whom the insurance benefits are payable, and the rights and conditions set forth in subdivisions (8), (9) and (10) of this section.
- (8) A provision that if the insurance, or any portion of it, on a person covered under the policy ceases because of termination of employment or of membership in the classes eligible for coverage under the policy, the person shall be entitled to be issued by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, and the first premium paid to the insurer, within 31 days after such termination, and provided further that,

- a. The individual policy shall, at the option of the person, be on any one of the forms, except term insurance, then customarily issued by the insurer at the age and for the amount applied for;
  - b. The individual policy shall be in an amount not in excess of the amount of life insurance which ceases because of the termination, provided that any amount of insurance which shall have matured on or before the date of the termination as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purposes of this provision, be included in the amount which is considered to cease because of the termination; and
  - c. The premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which the person then belongs, and to the person's age on the effective date of the individual policy.
- (9) A provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured under the policy at the date of the termination whose insurance terminates and who has been so insured for at least five years before the termination date shall be entitled to be issued by the insurer an individual policy of life insurance, subject to the conditions and limitations in (8) above, except that the group policy may provide that the amount of the individual policy shall not exceed the smaller of (i) the amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which the person is or becomes eligible under any group policy issued or reinstated by the same or another insurer within 31 days after termination, and (ii) ten thousand dollars (\$10,000).
- (10) A provision that if a person insured under the group policy dies during the period within which the person would have been entitled to have been issued an individual policy in accordance with (8) or (9) above and before such an individual policy shall have become effective, the amount of life insurance which the person would have been entitled to have been issued under the individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made. (1925, c. 58, s. 2; 1943, c. 597, s. 2; 1947, c. 834; 1991, c. 644, s. 9.)

**§ 58-58-141. Portability of group life insurance.**

(a) Definition. – For purposes of this section, "portability" means the prerogative to continue existing group life insurance coverage, or access alternate group life insurance coverage, that may be provided by a group life insurance policy to an individual insured after the individual's affiliation with the initial group terminates.

(b) Applicability. – This section applies to all certificates issued under group policies that are used in this State. This section also applies to a certificate issued under a policy issued and delivered to a trust or to an association outside of this State and covering persons residing in this State.

(c) Prohibitions. – The use of health questions, underwriting, or eligibility requirements that pertain to health status is prohibited when an individual insured elects to access a portability option provided by a group life insurance policy. (2007-298, s. 2.6.)

**§ 58-58-145. Group annuity contracts defined; requirements; issuance of individual certificates.**

(a) Any policy or contract, except a joint, reversionary or survivorship annuity contract, whereby annuities are payable to more than one person, is a group annuity contract. The person, firm or corporation to whom or to which the contract is issued, is the holder of the contract. The term "annuitant" means any person to whom or which payments are made under the group annuity contract. No authorized insurer shall deliver or issue for delivery in this State any group annuity contract except upon a group of annuitants that conforms to the following: under a contract issued to an employer, or to the trustee of a fund established by an employer or two or more employers in the same industry or kind of business, the stipulated payments on which shall be paid by the holder of the contract either wholly from the employer's funds or funds contributed by the employer, or partly from the funds and partly from funds contributed by the employees covered by such contract, and providing a plan of retirement annuities under a plan which permits all of the employees of such employer or of any specified class or classes thereof to become annuitants. Any such group of employees may include retired employees, and may include officers and managers as employees, and may include the employees of subsidiary or affiliated corporations of a corporation employer, and may include the individual proprietors, partners and employees of affiliated individuals and firms controlled by the holders through stock ownership, contract or otherwise.

(b) The insurer of a group annuity contract shall issue to the policyholder or to the annuitant directly, within 30 days of the annuitant's enrollment in the group annuity contract, an individual certificate for each annuitant which:

- (1) Identifies the annuity to which the annuitant is entitled.
- (2) States the name of the person to whom the annuity is payable.
- (3) Discloses all of the rights and obligations of the insurer, the policyholder, the annuitant, and the persons to whom the annuity is payable with respect to the group annuity contract.

G.S. 58-3-150 applies to the form of the individual certificate required by this subsection.

(c) Each group annuity contract shall include a provision that the insurer will issue to the policyholder within 30 days of the effective date of the contract, for delivery to each annuitant, an individual certificate setting forth the information described in subsection (b) of this section.

(d) This section does not apply to annuities used to fund:

- (1) An employee pension plan that is covered by the Employee Retirement Income Security Act of 1974 (ERISA);
- (2) A plan described in sections 401(a), 401(k), 403(b), or 457 of the Internal Revenue Code, where the plan, as defined in ERISA, is established or maintained by an employer;
- (3) A governmental or church plan defined in section 414 of the Internal Revenue Code or a deferred compensation plan of a state or local government or a tax-exempt organization under section 457 of the Internal Revenue Code; or

- (4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor. (1947, c. 721; 1993, c. 506, s. 3; 2005-234, s. 3; 2006-105, s. 2.9.)

**§ 58-58-146. Application for annuities required.**

(a) Each individual (nongroup) annuity contract shall be issued only upon application of the annuitant or proposed owner. Any application form, whether paper or electronic, is subject to G.S. 58-3-150, and if taken by an agent, broker, or other producer shall include the certificate of the agent, broker, or other producer that the agent, broker, or other producer has truly and accurately recorded on the application form the information provided by the annuitant or proposed owner. Every annuity contract subject to this section shall contain as part of the contract the original or reproduction of the application required by this section.

(b) The application copy required by this section may be either a photo copy of the original completed application, or a paper print of the completed application form, or a document that represents a compilation of information from the application process. Nothing in this subsection prohibits use of electronic application forms provided the format complies with these requirements. (2007-298, s. 1.2; 2009-382, s. 14.)

**§ 58-58-147. Surrender fees on death benefits.**

No authorized insurer shall deliver or issue for delivery in this State any deferred annuity contract that contains a provision that reduces the death benefit of the contract by a surrender fee when death occurs during the surrender period. (2007-298, s. 1.2.)

**§ 58-58-150. Employee life insurance defined.**

Employee life insurance is hereby declared to be that plan of life insurance other than salary savings life insurance under which individual policies are issued to the employees of any employer where such policies are issued on the life of more than one employee at date of issue. Premiums for such policies shall be paid by the employer or the trustee of a fund established by the employer either wholly from the employer's funds, or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees. (1947, c. 721; 1957, c. 1008.)

**§ 58-58-155. Assignment of interest in group policies and annuity contracts.**

Any individual insured under a group insurance policy or group annuity contract shall have the right, unless expressly prohibited under the terms of the policy or contract of insurance, to assign to any other person his rights and benefits under the policy or contract, including, but not limited to the right to designate the beneficiary or beneficiaries and the right of conversion guaranteed by G.S. 58-58-140, and, subject to the provisions of the policy relating to assignments thereunder, any such assignment, made either before or after April 28, 1969, shall be valid for the purpose of vesting in the assignee all such rights and benefits so assigned. (1969, c. 319.)

**§ 58-58-160. Voting power under policies of group life insurance.**

In every group policy issued by a domestic life insurance company, the employer shall be deemed to be the policyholder for all purposes within the meaning of Articles 1 through 64 of this Chapter, and, if entitled to vote at meetings of the company, shall be entitled to one vote thereat. (1925, c. 58, s. 3.)

**§ 58-58-165. Exemption from execution.**

No policy of group insurance, nor the proceeds thereof, when paid to any employee or employees thereunder, shall be liable to attachment, garnishment, or other process, or to be seized, taken, appropriated or applied by any legal or equitable process or operation of law, to pay any debt or liability of such employee, or his beneficiary, or any other person who may have a right thereunder, either before or after payment; but the proceeds thereof, when made payable to the estate of the employee insured, shall constitute a part of the estate of such employee available for the payment of debts. (1925, c. 58, s. 4; 1957, c. 1361.)

**§ 58-58-170. Contestability after reinstatement.**

A reinstated policy of life insurance or annuity contract may be contested on account of fraud or misrepresentation of facts material to the reinstatement only for the same period following reinstatement and with the same conditions and exceptions as the policy provides with respect to contestability after original issuance. The reinstatement application shall be deemed to be a part of the policy whether or not attached thereto. (1987, c. 752, s. 13.)

**§§ 58-58-175 through 58-58-195:** Reserved for future codification purposes.

Part 5. Viatical Settlements.

**§ 58-58-200. Short title.**

This Part may be cited as the Viatical Settlements Act. (2001-436, s. 3.)

**§ 58-58-205. Definitions.**

As used in this Article:

- (1) "Advertising" means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet, or similar communications media, including filmstrips, motion pictures, and videos, published, disseminated, circulated, or placed before the public, directly or indirectly, for the purpose of creating an interest in or inducing a person to sell a life insurance policy under a viatical settlement contract.
- (2) "Business of viatical settlements" means an activity involved in, but not limited to, the offering, solicitation, negotiation, procurement, effectuation, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating, or in any other manner, of viatical settlement contracts. "Business of viatical settlements" does not include an activity involving viatical settlement contracts as investments as regulated by Chapter 78A of the General Statutes.
- (3) "Chronically ill" means:
  - a. Being unable to perform at least two activities of daily living (i.e., eating, toileting, transferring, bathing, dressing, or continence);
  - b. Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or

- c. Having a level of disability similar to that described in sub-subdivision a. of this subdivision as determined by the Secretary of Health and Human Services.
- (4) "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy from a viatical settlement provider, credit enhancer, or any entity that has a direct ownership in a policy that is the subject of a viatical settlement contract, but:
  - a. Whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one or more viaticated policies; and
  - b. Who has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts.

"Financing entity" does not include a nonaccredited investor or viatical settlement purchaser.
- (5) "Fraudulent viatical settlement act" includes:
  - a. Acts or omissions committed by any person who, knowingly and with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits, or permits its employees or its agents to engage in acts including:
    - 1. Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, financing entity, insurer, insurance producer, viator, insured or any other person false material information, or concealing material information, as part of, in support of, or concerning a fact material to one or more of the following:
      - I. An application for the issuance of a viatical settlement contract or insurance policy.
      - II. The underwriting of a viatical settlement contract or insurance policy.
      - III. A claim for payment or benefit under a viatical settlement contract or insurance policy.
      - IV. Premiums paid on an insurance policy.
      - V. Payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or insurance policy.
      - VI. The reinstatement or conversion of an insurance policy.
      - VII. The solicitation, offer, effectuation, or sale of a viatical settlement contract or insurance policy.
      - VIII. The issuance of written evidence of viatical settlement contract or insurance.
      - IX. A financing transaction.
    - 2. Employing any device, scheme, or artifice to defraud related to viaticated policies.

- b. In the furtherance of a fraud or to prevent the detection of a fraud, any person commits or permits the person's employees or agents to:
    - 1. Remove, conceal, alter, destroy, or sequester from the Commissioner the assets or records of a licensee or other person engaged in the business of viatical settlements;
    - 2. Misrepresent or conceal the financial condition of a licensee, financing entity, insurer, or other person;
    - 3. Transact the business of viatical settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of viatical settlements; or
    - 4. File with the Commissioner or the insurance regulator of another jurisdiction a document containing false information or otherwise conceal information about a material fact from the Commissioner.
  - c. Embezzlement, theft, misappropriation, or conversion of monies, funds, premiums, credits, or other property of a viatical settlement provider, insurer, insured, viator, insurance policy owner, or any other person engaged in the business of viatical settlements or insurance; or
  - d. Attempting to commit, assisting, aiding, or abetting in the commission of, or conspiracy to commit, the acts or omissions specified in this subdivision.
- (6) "Policy" means an individual or group life insurance policy, group life insurance certificate, group life insurance contract, or any other arrangement of life insurance affecting the rights of a resident of this State or bearing a reasonable relation to this State, regardless of whether delivered or issued for delivery in this State.
  - (7) "Related provider trust" means a titling trust or other trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction.
  - (8) "Special purpose entity" means a corporation, partnership, trust, limited liability company, or other similar entity formed solely to provide either directly or indirectly access to institutional capital markets for a financing entity or licensed viatical settlement provider.
  - (9) "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in 24 months or fewer.
  - (10) "Viatical settlement broker" or "broker" means a person that on behalf of a viator and for a fee, commission, or other valuable consideration offers or attempts to negotiate viatical settlement contracts between a viator and one or more viatical settlement providers. The term does not include an attorney, certified public accountant, or a financial planner accredited by a nationally recognized accreditation agency who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider or purchaser.

- (11) "Viatical settlement contract" means a written agreement establishing the terms under which compensation or anything of value will be paid, which compensation or value is less than the expected death benefit of the policy, in return for the viator's assignment, transfer, sale, or devise of the death benefit or ownership of any portion of the policy. A viatical settlement contract also includes a contract for a loan or other financing transaction with a viator secured primarily by a policy, other than a loan by a life insurance company under the terms of the life insurance contract, or a loan secured by the cash value of a policy. A viatical settlement contract includes an agreement with a viator to transfer ownership or change the beneficiary designation at a later date regardless of the date that compensation is paid to the viator.
- (12) "Viatical settlement provider" or "provider" means a person, other than a viator, that enters into or effectuates a viatical settlement contract on residents of this State or residents of another state from offices within this State. "Viatical settlement provider" or "provider" does not include:
- a. A bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan;
  - b. The issuer of a life insurance policy providing accelerated benefits under rules adopted by the Commissioner and under the contract;
  - c. An authorized or eligible insurer that provides stop-loss coverage to a viatical settlement provider, purchaser, financing entity, special purpose entity, or related provider trust;
  - d. A natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;
  - e. A financing entity;
  - f. A special purpose entity;
  - g. A related provider trust;
  - h. A viatical settlement purchaser; or
  - i. An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended, and who purchases a viaticated policy from a viatical settlement provider.
- (13) "Viatical settlement purchase agreement" or "purchase agreement" means an agreement, entered into by a viatical settlement purchaser, to which the viator is not a party, to purchase a life insurance policy or an interest in a life insurance policy, that is entered into for the purpose of deriving an economic benefit.
- (14) "Viatical settlement purchaser" or "purchaser" means a person who gives a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy or a person who owns or acquires or is entitled to a beneficial interest in a trust that owns a viatical

settlement contract or is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement contract for the purpose of deriving an economic benefit. "Viatical settlement purchaser" does not include:

- a. A licensee under this Part;
  - b. An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended;
  - c. A financing entity;
  - d. A special purpose entity; or
  - e. A related provider trust.
- (15) "Viaticated policy" means a policy that has been acquired by a viatical settlement provider under a viatical settlement contract.
- (16) "Viator" means the owner of a policy or a certificate holder under a group policy who enters or seeks to enter into a viatical settlement contract. For the purposes of this Part, a viator shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed. "Viator" does not include:
- a. A licensee under this Part;
  - b. An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended;
  - c. A financing entity;
  - d. A special purpose entity; or
  - e. A related provider trust. (2001-436, s. 3; 2007-298, s. 7.7; 2007-484, s. 43.5; 2011-284, s. 56.)

#### **§ 58-58-210. License requirements.**

(a) No person shall operate as a provider or broker without first obtaining a license from the insurance regulator of the state of residence of the viator. If there is more than one viator on a single policy and the viators are residents of different states, the viatical settlement shall be governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all viators.

(b) Application for a provider or broker license shall be made to the Commissioner by the applicant on a form prescribed by the Commissioner, and these applications shall be accompanied by a fee of five hundred dollars (\$500.00).

(c) Licenses may be renewed from year to year on the anniversary date upon payment of the annual renewal fee of five hundred dollars (\$500.00). Failure to pay the fees by the renewal date results in expiration of the license.

(d) The applicant shall provide information on forms required by the Commissioner. The Commissioner may require the applicant to fully disclose the identity of all stockholders, partners, officers, members, and employees; and the Commissioner may refuse to issue a license in the name

of a legal entity if not satisfied that any officer, employee, stockholder, partner, or member of the legal entity who may materially influence the applicant's conduct meets the standards of this Part.

(e) A license issued to a legal entity authorizes all partners, officers, members, and designated employees to act as providers or brokers, as applicable, under the license; and all those persons shall be named in the application and any supplements to the application.

(f) Upon the filing of an application and the payment of the license fee, the Commissioner shall investigate each applicant and issue a license if the Commissioner finds that the applicant:

- (1) If a provider, has provided a detailed plan of operation.
- (2) Is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for.
- (3) Has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied.
- (4) If a legal entity, provides a certificate of good standing from the state of its domicile.

(g) The Commissioner shall not issue a license to a nonresident applicant unless a written designation of an agent for service of process is filed and maintained with the Commissioner or the applicant has filed with the Commissioner the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the Commissioner.

(h) A provider or broker shall provide to the Commissioner new or revised information about officers, ten percent (10%) or more stockholders, partners, directors, members, or designated employees within 20 days after any change in the constituent membership of that respective category of persons. (2001-436, s. 3; 2009-451, s. 21.17(a).)

#### **§ 58-58-215. License revocation and denial.**

The Commissioner may suspend, revoke, or refuse to issue or renew the license of a provider or broker if the Commissioner finds that:

- (1) There was any material misrepresentation in the application for the license;
- (2) The licensee or any officer, partner, member, or key management personnel has been convicted of fraudulent or dishonest practices, is subject to a final administrative action, or is otherwise shown to be untrustworthy or incompetent;
- (3) The provider demonstrates a pattern of unreasonable payments to viators;
- (4) The licensee or any officer, partner, member, or key management personnel has been found guilty of, or has pleaded guilty or nolo contendere to, any felony, or to a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;
- (5) The provider has entered into any viatical settlement contract that has not been approved pursuant to this Part;
- (6) The provider has failed to honor contractual obligations set out in a viatical settlement contract;
- (7) The licensee no longer meets the requirements for initial licensure;
- (8) The provider has assigned, transferred, or pledged a viaticated policy to a person other than a provider licensed in this State, viatical settlement purchaser, an accredited investor, or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933,

as amended, financing entity, special purpose entity, or related provider trust;  
or

- (9) The licensee or any officer, partner, member, or key management personnel has violated any provision of this Part. (2001-436, s. 3.)

**§ 58-58-220. Approval of viatical settlement contracts and disclosure statements.**

A person shall not use a contract or provide to a viator a disclosure statement form in this State unless filed with and approved by the Commissioner. The Commissioner shall disapprove a contract form or disclosure statement form if, in the Commissioner's opinion, the contract or provisions contained therein are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the viator. The Commissioner may also require the submission of advertising material. (2001-436, s. 3.)

**§ 58-58-225. Reporting requirements and privacy.**

(a) Each licensee shall file with the Commissioner on or before June 1 of each year an annual statement containing such information as the Commissioner prescribes by administrative rule.

(b) Except as otherwise allowed or required by law, a provider, broker, insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity shall not disclose that identity as an insured, or the insured's financial or medical information, to any other person unless the disclosure:

- (1) Is necessary to effect a viatical settlement between the viator and a provider and the viator and insured have provided prior written consent to the disclosure;
- (2) Is provided in response to an investigation or examination by the Commissioner or any other governmental officer or agency or pursuant to the requirements of G.S. 58-58-270;
- (3) Is a term of or condition to the transfer of a policy by one provider to another provider;
- (4) Is necessary to permit a financing entity, related provider trust, or special purpose entity to finance the purchase of policies by a provider and the viator and insured have provided prior written consent to the disclosure;
- (5) Is necessary to allow the provider or broker or its authorized representatives to make contacts for the purpose of determining health status; or
- (6) Is required to purchase stop-loss coverage. (2001-436, s. 3.)

**§ 58-58-230. Examinations.**

(a) The Commissioner may conduct an examination of a licensee as often as the Commissioner considers appropriate.

(b) An examination under this Part shall be conducted in accordance with the Examination Law.

(c) In lieu of an examination of any foreign or alien person licensed under this Part, the Commissioner may accept an examination report on the licensee prepared by the appropriate viatical settlement regulator for the licensee's state of domicile or port-of-entry state.

(d) When making an examination under this Part, the Commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals

and specialists as examiners, the reasonable cost of which shall be borne by the licensee that is the subject of the examination. (2001-436, s. 3.)

**§ 58-58-235. Record retention requirements.**

- (a) A person licensed under this Part shall retain copies for five years of all:
  - (1) Proposed, offered, or executed contracts, purchase agreements, underwriting documents, policy forms, and applications from the date of the proposal, offer, or execution of the contract or purchase agreement, whichever is later.
  - (2) Checks, drafts, or other evidence and documentation related to the payment, transfer, deposit, or release of funds from the date of the transaction.
  - (3) Other records and documents related to the requirements of this Part.
- (b) This section does not relieve a person of the obligation to produce these documents to the Commissioner after the retention period has expired if the person has retained the documents.
- (c) Records required to be retained by this section must be legible and complete and may be retained in paper, photograph, microprocessor, magnetic, mechanical, or electronic media, or by any process that accurately reproduces or forms a durable medium for the reproduction of a record. (2001-436, s. 3.)

**§ 58-58-240. Investigative authority of the Commissioner.**

The Commissioner may investigate suspected fraudulent viatical settlement acts and persons engaged in the business of viatical settlements. (2001-436, s. 3.)

**§ 58-58-245. Disclosure.**

- (a) With each application for a viatical settlement, the provider or broker shall provide the viator with at least the following disclosures no later than the time the application for the contract is signed by all parties. The disclosures shall be provided in a separate document that is signed by the viator and the provider or broker and shall provide the following information:
  - (1) There are possible alternatives to contracts including any accelerated death benefits or policy loans offered under the viator's policy.
  - (2) Some or all of the proceeds of the viatical settlement may be taxable under federal income tax and state franchise and income taxes, and assistance should be sought from a professional tax advisor.
  - (3) Proceeds of the viatical settlement could be subject to the claims of creditors.
  - (4) Receipt of the proceeds of a viatical settlement may adversely affect the viator's eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies.
  - (5) The viator has the right to rescind a contract for 10 business days after the receipt of the viatical settlement proceeds by the viator, as provided in G.S. 58-58-250(h). If the insured dies during the rescission period, the settlement contract shall be deemed to have been rescinded, subject to repayment of all viatical settlement proceeds and any premiums, loans, and loan interest to the provider or purchaser.
  - (6) Funds will be sent to the viator within three business days after the provider has received the insurer or group administrator's acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated.

- (7) Entering into a contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy, to be forfeited by the viator. Assistance should be sought from a financial adviser.
- (8) Disclosure to a viator shall include distribution of a brochure describing the process of viatical settlements. The NAIC's form for the brochure shall be used unless the Commissioner develops one.
- (9) The disclosure document shall contain the following language: "All medical, financial, or personal information solicited or obtained by a provider or broker about an insured, including the insured's identity or the identity of family members, a spouse or a significant other may be disclosed as necessary to effect the viatical settlement between the viator and the provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years.
- (10) The insured may be contacted by either the provider or broker or its authorized representative for the purpose of determining the insured's health status. This contact is limited to once every three months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less.

(b) A provider shall provide the viator with at least the following disclosures no later than the date the contract is signed by all parties. The disclosures shall be conspicuously displayed in the contract or in a separate document signed by the viator and the provider or broker, and provide the following information:

- (1) State the affiliation, if any, between the provider and the issuer of the insurance policy to be viaticated.
- (2) The document shall include the name, address, and telephone number of the provider.
- (3) A broker shall disclose to a prospective viator the amount and method of calculating the broker's compensation. The term "compensation" includes anything of value paid or given to a broker for the placement of a policy.
- (4) If an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, the viator shall be informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with his or her insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement.
- (5) State the dollar amount of the current death benefit payable to the provider under the policy. If known, the provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy, and the provider's interest in those benefits.
- (6) State the name, business address, and telephone number of the independent third-party escrow agent and the fact that the viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

(c) If the provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate the change in ownership or beneficiary to the insured within 20 days after the change. (2001-436, s. 3.)

**§ 58-58-250. General rules.**

(a) A provider entering into a contract shall first obtain:

- (1) If the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a contract.
- (2) A document in which the insured consents to the release of his or her medical records to a provider or broker and, if the policy being viaticated has been in effect for less than five years, to the insurance company that issued the policy covering the life of the insured.

(b) Within 20 days after a viator executes documents necessary to transfer any rights under a policy or within 20 days after entering any agreement, option, promise, or any other form of understanding, expressed or implied, to viaticate the policy, the provider shall give written notice to the insurer that issued that policy that the policy has or will become a viaticated policy. The notice shall be accompanied by the documents required by subsection (c) of this section.

(c) If the policy being viaticated has been in effect for less than five years, the viatical provider shall deliver a copy of the medical release required under subdivision (a)(2) of this section, a copy of the viator's application for the contract, the notice required under subsection (b) of this section, and a request for verification of coverage to the insurer that issued the policy that is the subject of the viatical settlement. The NAIC's form for verification shall be used unless the Commissioner develops standards for verification.

(d) The insurer shall respond to a request for verification of coverage submitted on an approved form by a provider within 30 days after the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the policy.

(e) Before or at the time of execution of the contract, the provider shall obtain a witnessed document in which the viator consents to the contract, represents that the viator has a full and complete understanding of the contract, that he or she has a full and complete understanding of the benefits of the policy, acknowledges that he or she is entering into the contract freely and voluntarily and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness or condition and that the terminal or chronic illness or condition was first diagnosed after the policy was issued.

(f) If a broker performs any of these activities required of the provider, the provider is deemed to have fulfilled the requirements of this section.

(g) All medical information solicited or obtained by any licensee is subject to the applicable provisions of federal and North Carolina law relating to confidentiality of medical information.

(h) All contracts entered into in this State shall provide the viator with an unconditional right to rescind the contract for at least 10 business days after the receipt of the viatical settlement proceeds. If the insured dies during the rescission period, the contract shall be deemed to have been rescinded, subject to repayment to the provider or purchaser of all viatical settlement proceeds, and any premiums, loans, and loan interest that have been paid by the provider or purchaser.

(i) The provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment, or change in beneficiary directly to the independent escrow agent. Within three business days after the date the escrow agent receives the documents, or from the date the provider receives the documents, if the viator erroneously provides the documents directly to the provider, the provider shall pay or transfer the proceeds of the viatical settlement into an escrow or trust account maintained in a state or federally chartered financial institution, the deposits of which are insured by the Federal Deposit Insurance Corporation (FDIC) or any successor entity. Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment, or change in beneficiary forms to the provider or related provider trust. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment, or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the viator.

(j) Failure to tender consideration to the viator for the contract within the time required under G.S. 58-58-245(a)(6) renders the contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator.

(k) Contacts with the insured for the purpose of determining the health status of the insured by the provider or broker after the viatical settlement has occurred shall only be made by the provider or broker licensed in this State or its authorized representatives and shall be limited to once every three months for insureds with a life expectancy of more than one year, and to no more than once per month for insureds with a life expectancy of one year or less. The provider or broker shall explain the procedure for these contacts at the time the contract is entered into. The limitations set forth in this subsection shall not apply to any contacts with an insured for reasons other than determining the insured's health status. Providers and brokers shall be responsible for the actions of their authorized representatives.

(l) Every related provider trust shall have a written agreement with the licensed viatical settlement provider under which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the Commissioner as if those records and files were maintained directly by the licensed viatical settlement provider.

(m) Notwithstanding the manner in which a viatical settlement broker is compensated, a broker is deemed to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator. (2001-436, s. 3.)

#### **§ 58-58-255. Prohibited practices.**

(a) It is a violation of this Part for any person to enter into a contract within a two-year period commencing with the date of issuance of the policy unless the viator certifies to the provider that one or more of the following conditions have been met within the two-year period:

- (1) The policy was issued upon the viator's exercise of conversion rights arising out of a policy, provided the total time covered under the conversion policy plus the time covered under the prior policy is at least 24 months, or the contestability and suicide time periods have been waived by the insurer. The time covered under a group policy shall be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship.

- (2) The viator is a charitable organization exempt from taxation under 26 U.S.C. § 501(c)(3).
- (3) The viator is not a natural person (e.g., the owner is a corporation, limited liability company, partnership, etc.).
- (4) The viator submits independent evidence to the provider that one or more of the following conditions have been met within the two-year period:
  - a. The viator or insured is terminally or chronically ill.
  - b. The viator's spouse dies.
  - c. The viator divorces his or her spouse.
  - d. The viator retires from full-time employment.
  - e. The viator becomes physically or mentally disabled and a physician determines that the disability prevents the viator from maintaining full-time employment.
  - f. The viator was the insured's employer at the time the policy was issued and the employment relationship terminated.
  - g. A final order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a creditor of the viator, adjudicating the viator bankrupt or insolvent, or approving a petition seeking reorganization of the viator or appointing a receiver, trustee, or liquidator to all or a substantial part of the viator's assets.
  - h. The viator experiences a significant decrease in income that is unexpected and that impairs the viator's reasonable ability to pay the policy premium.
  - i. The viator or insured disposes of his or her ownership interests in a closely held corporation.

(b) Copies of the independent evidence described in subdivision (a)(4) of this section and documents required by G.S. 58-58-250(a) shall be submitted to the insurer when the provider submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the provider that the copies are true and correct copies of the documents received by the provider.

(c) If the provider submits to the insurer a copy of the owner or insured's certification described in subdivision (a)(4) and subsection (b) of this section when the provider submits a request to the insurer to effect the transfer of the policy to the provider, the copy shall be deemed to conclusively establish that the contract satisfies the requirements of this section, and the insurer shall timely respond to the request. (2001-436, s. 3.)

#### **§ 58-58-260. Advertising for viatical settlements.**

(a) The purpose of this section is to provide prospective viators with clear and unambiguous statements in the advertisement of viatical settlements and to assure the clear, truthful, and adequate disclosure of the benefits, risks, limitations, and exclusions of any contract. This purpose is intended to be accomplished by the establishment of guidelines and standards of permissible and impermissible conduct in the advertising of viatical settlements to assure that product descriptions are presented in a manner that prevents unfair, deceptive, or misleading advertising and is conducive to accurate presentation and description of viatical settlements through the advertising media and material used by viatical settlement licensees.

(b) This section shall apply to any advertising of contracts or related products or services intended for dissemination in this State, including Internet advertising viewed by persons located in this State. Where disclosure requirements are established pursuant to federal regulation, this section shall be interpreted so as to minimize or eliminate conflict with federal regulation wherever possible.

(c) Every viatical settlement licensee shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all advertisements of its contracts, products, and services. All advertisements, regardless of by whom written, created, designed, or presented, shall be the responsibility of the viatical settlement licensee, as well as the individual who created or presented the advertisement. A system of control shall include regular routine notification, at least once a year, to agents and others, authorized by the viatical settlement licensee, who disseminate advertisements of the requirements and procedures for approval before the use of any advertisements not furnished by the viatical settlement licensee.

(d) Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a contract shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the Commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

(e) All information required to be disclosed under this Part shall be set out conspicuously and in close conjunction with the statements to which such information relates or under appropriate captions of such prominence that it shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the context of the advertisement so as to be confusing or misleading.

(f) An advertisement shall not:

- (1) Omit material information or use words, phrases, statements, references, or illustrations if the omission or use has the capacity, tendency, or effect of misleading or deceiving viators as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence. The fact that the contract offered is made available for inspection before consummation of the sale, or an offer is made to refund the payment if the viator is not satisfied or that the contract includes a "free look" period that satisfies or exceeds legal requirements, does not remedy misleading statements.
- (2) Use the name or title of a life insurance company or a policy unless the insurer has approved the advertisement.
- (3) State or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable, or in any manner an incorrect or improper practice.
- (4) State or imply that a contract, benefit, or service has been approved or endorsed by a group of individuals, society, association, or other organization unless that is the fact and unless any relationship between an organization and the viatical settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled, or managed by the viatical settlement licensee, or receives any payment or other consideration from the viatical settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

- (5) Contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.
- (6) Disparage insurers, providers, brokers, insurance producers, policies, services, or methods of marketing.
- (7) Use a trade name, group designation, name of the parent company of a viatical settlement licensee, name of a particular division of the viatical settlement licensee, service mark, slogan, symbol, or other device or reference without disclosing the name of the viatical settlement licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the viatical settlement licensee, or to create the impression that a company other than the viatical settlement licensee would have any responsibility for the financial obligation under a contract.
- (8) Use any combination of words, symbols, or physical materials that by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective viators into believing that the solicitation is in some manner connected with a government program or agency.
- (9) Create the impression that the provider, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its contracts are recommended or endorsed by any government entity.

(g) The words "free", "no cost", "without cost", "no additional cost", "at no extra cost", or words of similar import shall not be used with respect to any benefit or service unless true. An advertisement may specify the charge for a benefit or a service, may state that a charge is included in the payment, or use other appropriate language.

(h) Testimonials, appraisals, or analyses used in advertisements must be genuine; represent the current opinion of the author; be applicable to the contract, product, or service advertised, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonials, appraisals, analyses, or endorsements. In using testimonials, appraisals, or analyses, the viatical settlement licensee makes as its own all the statements contained therein, and the statements are subject to all the provisions of this section.

(i) If the individual making a testimonial, appraisal, analysis, or an endorsement has a financial interest in the provider or related entity as a stockholder, director, officer, employee, or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.

(j) When an endorsement refers to benefits received under a contract, all pertinent information shall be retained for a period of five years after its use.

(k) The name of the viatical settlement licensee shall be clearly identified in all advertisements about the licensee or its contracts, products, or services, and if any specific contract is advertised, the contract shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the provider or broker shall be shown on the application.

(l) An advertisement may state that a viatical settlement licensee is licensed in the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that a competing viatical settlement licensee may not be so licensed. The advertisement may ask the

audience to consult the licensee's web site or contact the Department to find out if the state requires licensing and, if so, whether the provider or broker is licensed.

(m) The name of the actual licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, any group designation, name of any affiliate or controlling entity of the licensee, service mark, slogan, symbol, or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the licensee.

(n) An advertisement shall not directly or indirectly create the impression that any state or federal governmental agency endorses, approves, or favors:

- (1) Any viatical settlement licensee or its business practices or methods of operation;
- (2) The merits, desirability, or advisability of any contract;
- (3) Any contract; or
- (4) Any policy or life insurance company.

(o) If the advertiser emphasizes the speed with which the viatication will occur, the advertising must disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.

(p) If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the licensee during the past six months. (2001-436, s. 3.)

**§ 58-58-265. Fraudulent viatical settlement acts, interference, and participation of convicted felons prohibited.**

- (a) A person who commits a fraudulent viatical settlement act is guilty of a Class H felony.
- (b) A person shall not knowingly or intentionally interfere with the enforcement of the provisions of this Part or investigations of suspected or actual violations of this Part.
- (c) A person in the business of viatical settlements shall not knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements. (2001-436, s. 3.)

**§ 58-58-267. Fraud warning required.**

(a) Viatical settlement contracts and purchase agreement forms and applications for viatical settlements, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:

"Any person who knowingly presents false information in an application for insurance or viatical settlement contract or a viatical settlement purchase agreement is guilty of a felony and may be subject to fines and confinement in prison."

(b) The lack of a statement as required in subsection (a) of this section does not constitute a defense in any prosecution for a fraudulent viatical settlement act. (2001-436, s. 3.)

**§ 58-58-268. Viatical settlement antifraud initiatives.**

(a) Viatical settlement providers and viatical settlement brokers shall have in place antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent viatical

settlement acts. At the discretion of the Commissioner, the Commissioner may order, or a licensee may request and the Commissioner may grant, such modifications of the following required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of this section.

(b) Antifraud initiatives shall include:

- (1) Fraud investigators, who may be viatical settlement provider employees or viatical settlement broker employees or independent contractors; and
- (2) An antifraud plan, which shall be submitted to the Commissioner. The antifraud plan shall include, but not be limited to:
  - a. A description of the procedures for detecting and investigating possible fraudulent viatical settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;
  - b. A description of the procedures for reporting possible fraudulent viatical settlement acts to the Commissioner;
  - c. A description of the plan for antifraud education and training of underwriters and other personnel; and
  - d. A description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent viatical settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.

(c) Antifraud plans submitted to the Commissioner are privileged and confidential, are not public records, and are not subject to discovery or subpoena in a civil or criminal action. (2001-436, s. 3.)

#### **§ 58-58-270. Report to Commissioner.**

Whenever any person licensed under this Part knows or has reasonable cause to believe that any other person has violated any provision of this Part, it is the duty of that person, upon acquiring the knowledge, to notify the Commissioner and provide the Commissioner with a complete statement of all of the relevant facts and circumstances. The report is a privileged communication and when made without actual malice does not subject the person making the report to any liability whatsoever. The Commissioner may suspend, revoke, or refuse to renew the license of any person who willfully fails to comply with this section. (2001-436, s. 3.)

#### **§ 58-58-275. Reporting and investigation of suspected viatical settlement fraudulent acts; immunity from liability.**

(a) As used in this section, "Commissioner" includes an employee, agent, or designee of the Commissioner. A person, or an employee or agent of that person, acting without actual malice, is not subject to civil liability for libel, slander, or any other cause of action by virtue of furnishing to the Commissioner, under the requirements of law or at the direction of the Commissioner, reports or other information relating to any known or suspected viatical settlement fraudulent act.

(b) The Commissioner, acting without actual malice, is not subject to civil liability for libel or slander by virtue of an investigation of any known or suspected viatical settlement fraudulent act; or by virtue of the publication or dissemination of any official report related to any such

investigation, which report is published or disseminated in the absence of fraud, bad faith, or actual malice on the part of the Commissioner.

(c) During the course of an investigation of a known or suspected viatical settlement fraudulent act, the Commissioner may request any person to furnish copies of any information relative to the known or suspected viatical settlement fraudulent act. The person shall release the information requested and cooperate with the Commissioner under this section. (2001-436, s. 3.)

**§ 58-58-280. Confidentiality.**

(a) Information and evidence provided under G.S. 58-58-270 or G.S. 58-58-275 or obtained by the Commissioner in an investigation of suspected or actual fraudulent viatical settlement acts shall be privileged and confidential, is not a public record, and is not subject to discovery or subpoena in a civil or criminal action.

(b) Subsection (a) of this section does not prohibit release by the Commissioner of documents and evidence obtained in an investigation of suspected or actual fraudulent viatical settlement acts:

- (1) In administrative or judicial proceedings to enforce laws administered by the Commissioner;
- (2) To federal, state, or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement acts, or to the NAIC; or
- (3) At the discretion of the Commissioner, to a person in the business of viatical settlements that is aggrieved by a fraudulent viatical settlement act.

(c) Release of documents and evidence under subsection (b) of this section does not abrogate or modify the privilege granted in subsection (a) of this section. (2001-436, s. 3.)

**§ 58-58-285. Other law enforcement or regulatory authority.**

This Part does not:

- (1) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law.
- (2) Prevent or prohibit a person from disclosing voluntarily information concerning viatical settlement fraud to a law enforcement or regulatory agency other than the Commissioner.
- (3) Limit the powers granted elsewhere by the laws of this State to the Commissioner to investigate and examine possible violations of law and to take appropriate action against wrongdoers. (2001-436, s. 3.)

**§ 58-58-290. Injunctions; civil remedies; cease and desist orders.**

(a) In addition to the penalties and other enforcement provisions of this Part, if any person violates this Part or any rule implementing this Part, the Commissioner may seek an injunction in a court of competent jurisdiction and may apply for temporary and permanent orders that the Commissioner determines are necessary to restrain the person from committing the violation.

(b) Any person damaged by the acts of a person in violation of this Part may bring a civil action against the person committing the violation in a court of competent jurisdiction.

(c) The Commissioner may issue, in accordance with G.S. 58-63-32, a cease and desist order upon a person that violates any provision of this Part, any rule or order adopted by the

Commissioner, or any written agreement entered into with the Commissioner. The cease and desist order may be subject to judicial review under G.S. 58-63-35.

(d) When the Commissioner finds that an activity in violation of this Part presents an immediate danger to the public that requires an immediate final order, the Commissioner may issue an emergency cease and desist order reciting with particularity the facts underlying the findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains effective for 90 days. If the Commissioner begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective, absent an order by a court of competent jurisdiction in accordance with G.S. 58-63-35.

(e) In addition to the penalties and other enforcement provisions of this Part, any person who violates this Part is subject to G.S. 58-2-70. (2001-436, s. 3.)

#### **§ 58-58-295. Unfair trade practices.**

A violation of this Part is an unfair trade practice under Article 63 of this Chapter. (2001-436, s. 3.)

#### **§ 58-58-300. Authority to adopt rules.**

The Commissioner may:

- (1) Adopt rules implementing this Part.
- (2) Establish standards for evaluating reasonableness of payments under contracts for persons who are terminally or chronically ill, including standards for the amount paid in exchange for assignment, transfer, sale, or devise of a benefit under a policy.
- (3) Establish appropriate licensing requirements, fees, and standards for continued licensure for providers.
- (4) Require a bond or other mechanism for financial accountability for providers and brokers.
- (5) Adopt rules governing the relationship and responsibilities of insurers, providers, and brokers during the viatication of a policy. (2001-436, s. 3; 2011-284, s. 57.)

#### **§ 58-58-305. Jurisdictional limitations.**

Nothing in this Part affects the North Carolina Securities Act or the jurisdiction of the North Carolina Secretary of State. (2001-436, s. 3.)

#### **§ 58-58-310. Effective date.**

A provider or broker transacting business in this State, pursuant to G.S. 58-58-42, on the effective date of this Part may continue to do so pending approval of the provider's or broker's application for a license as long as the application is filed with the Commissioner no later than July 1, 2002. If the application is disapproved, then the provider or broker shall cease transacting viatical business in this State. (2001-436, s. 3.)

### **Part 6. Dishonest and Predatory Sales to Military Personnel.**

#### **§ 58-58-320. Purpose.**

(a) The purpose of this Part is to set forth standards to protect service members of the Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive, or unfair.

(b) Nothing in this Part shall be construed to create or imply a private cause of action for a violation of this Part. (2007-535, s. 1.)

#### **§ 58-58-325. Scope.**

This Part applies only to the solicitation or sale of any life insurance or annuity product by an insurer or insurance producer to an active duty service member of the Armed Forces. (2007-535, s. 1; 2011-183, s. 44.)

#### **§ 58-58-330. Exemptions.**

(a) This Part does not apply to solicitations or sales involving:

- (1) Credit insurance.
- (2) Group life insurance or group annuities where there is no in-person, face-to-face solicitation of individuals by an insurance producer or where the contract or certificate does not include a side fund.
- (3) An application to the existing insurer that issued the existing policy or contract when (i) a contractual change or a conversion privilege is being exercised, (ii) the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the Commissioner, or (iii) a term conversion privilege is exercised among corporate affiliates.
- (4) Contracts offered by Servicemembers' Group Life Insurance or Veterans' Group Life Insurance, as authorized by 38 U.S.C. § 1965, et seq.
- (5) Individual stand-alone health policies, including disability income policies.
- (6) Life insurance contracts offered through or by a nonprofit military association, qualifying under section 501(c)(23) of the Internal Revenue Code (IRC), and that are not underwritten by an insurer.
- (7) Contracts used to fund:
  - a. An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA).
  - b. A plan described by sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code, if established or maintained by an employer.
  - c. A government or church plan defined in section 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the Internal Revenue Code.
  - d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.
  - e. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process.

f. Prearranged funeral contracts.

(b) Nothing in this Part shall be construed to abrogate the ability of nonprofit organizations (and/or other organizations) to educate members of the Armed Forces in accordance with Department of Defense "DoD Instruction 1344.07 – Personal Commercial Solicitation on DoD Installations" or successor directive.

(c) For purposes of this Part, general advertisements, direct mail, and Internet marketing do not constitute "solicitation." Telephone marketing does not constitute "solicitation," provided the caller explicitly and conspicuously discloses that the product concerned is life insurance and makes no statements that avoid a clear and unequivocal statement that life insurance is the subject matter of the solicitation. Provided, however, nothing in this subsection shall be construed to exempt an insurer or insurance producer from this Part in any in-person, face-to-face meeting established as a result of the "solicitation" exemptions identified in this subsection. (2007-535, s. 1; 2011-183, s. 45.)

### **§ 58-58-335. Definitions.**

As used in this Part:

- (1) "Active duty" means full-time duty in the active military service of the United States and includes service by members of the reserve component (National Guard and Reserve) while serving under published orders for active duty or full-time training. "Active duty" does not include service by members of the reserve component who are performing active duty or active duty for training under military calls or orders specifying periods of less than 31 calendar days.
- (1a) "Armed Forces" means all components of the United States Army, Navy, Air Force, Marine Corps, and Coast Guard.
- (2) "Department of Defense personnel" means all active duty service members and all civilian employees, including nonappropriated fund employees and special government employees, of the Department of Defense.
- (3) "Door to door" means a solicitation or sales method whereby an insurance producer proceeds randomly or selectively from household to household without prior specific appointment.
- (4) "General advertisement" means an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance or the promotion of the insurer or the insurance producer.
- (5) "Insurance producer" means a person required to be licensed under Article 33 of this Chapter to sell, solicit, or negotiate life insurance, including annuities.
- (6) "Insurer" means an insurance company required to be licensed under this Chapter to provide life insurance products, including annuities.
- (7) "Known" or "knowingly" means, depending on its use in this Part, the insurance producer or insurer had actual awareness, or in the exercise of

ordinary care should have known, at the time of the act or practice complained of, that the person solicited is or was:

- a. A service member; or
  - b. A service member with a pay grade of E-4 or below.
- (8) "Life insurance" means insurance coverage on human lives, including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income; and unless otherwise specifically excluded, includes individually issued annuities.
- (9) "Military installation" means any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.
- (10) "MyPay" means the Defense Finance and Accounting Service (DFAS) Web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.
- (11) "Service member" means any active duty commissioned officer, any active duty warrant officer, or any active duty enlisted member of the Armed Forces.
- (12) "SGLI" means Servicemembers' Group Life Insurance, as authorized by 38 U.S.C. § 1965, et seq.
- (13) "Side fund" means a fund or reserve that is part of or otherwise attached to a life insurance policy (excluding individually issued annuities) by rider, endorsement, or other mechanism that accumulates premium or deposits with interest or by other means. "Side fund" does not include:
- a. Accumulated value or cash value or secondary guarantees provided by a universal life policy;
  - b. Cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance; or
  - c. A premium deposit fund that:
    - 1. Contains only premiums paid in advance that accumulate at interest.
    - 2. Imposes no penalty for withdrawal.
    - 3. Does not permit funding beyond future required premiums.
    - 4. Is not marketed or intended as an investment.
    - 5. Does not carry a commission, either paid or calculated.
- (14) "Specific appointment" means a prearranged appointment agreed upon by both parties and definite as to place and time.
- (15) Repealed by Session Laws 2011-183, s. 46, effective June 20, 2011.
- (16) "VGLI" means Veterans' Group Life Insurance, as authorized by 38 U.S.C. § 1965, et seq. (2007-535, s. 1; 2011-183, s. 46.)

**§ 58-58-340. Practices declared false, misleading, deceptive, or unfair on a military installation.**

(a) The following acts or practices when committed on a military installation by an insurer or insurance producer with respect to the in-person, face-to-face solicitation of life insurance are declared to be false, misleading, deceptive, or unfair:

- (1) Knowingly soliciting the purchase of any life insurance product "door to door" or without first establishing a specific appointment for each meeting with the prospective purchaser.
- (2) Soliciting service members in a group or "mass" audience or in a "captive" audience where attendance is not voluntary.
- (3) Knowingly making appointments with or soliciting service members during their normally scheduled duty hours.
- (4) Making appointments with or soliciting service members in barracks, day rooms, unit areas, or transient personnel housing or other areas where the installation commander has prohibited solicitation.
- (5) Soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee.
- (6) Posting unauthorized bulletins, notices, or advertisements.
- (7) Failing to present DD Form 2885, Personal Commercial Solicitation Evaluation, to service members solicited or encouraging service members solicited not to complete or submit a DD Form 2885.
- (8) Knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the Armed Forces without first obtaining for the insurer's files a completed copy of any required form that confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives, or rules of the Department of Defense or any branch of the Armed Forces.

(b) The following acts or practices when committed on a military installation by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive, or unfair:

- (1) Using Department of Defense personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members.
- (2) Using an insurance producer to participate in any Armed Forces sponsored education or orientation program. (2007-535, s. 1; 2011-183, s. 47.)

**§ 58-58-345. Practices declared false, misleading, deceptive, or unfair regardless of location.**

(a) The following acts or practices by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive, or unfair:

- (1) Submitting, processing, or assisting in the submission or processing of any allotment form or similar device used by the Armed Forces to direct a service member's pay to a third party for the purchase of life insurance. The foregoing includes, but is not limited to, using or assisting in using a service member's MyPay account or other similar Internet or electronic medium for such purposes. This subdivision does not prohibit assisting a service member by providing insurer or premium information necessary to complete any allotment form.
- (2) Knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship. For purposes of this section, a formal banking relationship is established when the depository institution:
  - a. Provides the service member a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act, 12 U.S.C. § 4301, et seq. and the regulations promulgated thereunder; and
  - b. Permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums.
- (3) Employing any device or method or entering into any agreement whereby funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's Leave and Earnings Statement or equivalent or successor form as "Savings" or "Checking" and where the service member has no formal banking relationship as defined in subdivision (a)(2) of this section.
- (4) Entering into any agreement with a depository institution for the purpose of receiving funds from a service member whereby the depository institution, with or without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship.
- (5) Using Department of Defense personnel, directly or indirectly, as a representative or agent in any official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade or to the family members of such personnel.
- (6) Offering or giving anything of value, directly or indirectly, to Department of Defense personnel to procure their assistance in encouraging, assisting, or facilitating the solicitation or sale of life insurance to another service member.
- (7) Knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for his or her attendance to any event where an application for life insurance is solicited.

- (8) Advising a service member with a pay grade of E-4 or below to change his or her income tax withholding or state of legal residence for the sole purpose of increasing disposable income to purchase life insurance.
- (b) The following acts or practices by an insurer or insurance producer lead to confusion regarding source, sponsorship, approval, or affiliation and are declared to be false, misleading, deceptive, or unfair:
  - (1) Making any representation, or using any device, title, descriptive name, or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer, or product offered is affiliated, connected or associated with, endorsed, sponsored, sanctioned, or recommended by the U.S. Government, the Armed Forces, or any state or federal agency or government entity. Examples of prohibited insurance producer titles include, but are not limited to, "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant," or "Veteran's Benefits Counselor." Nothing in this subdivision prohibits a person from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning. Those designations include, but are not limited to, Chartered Life Underwriter (CLU), Chartered Financial Consultant, (ChFC), Certified Financial Planner (CFP), Master of Science in Financial Services (MSFS), or Masters of Science Financial Planning (MS).
  - (2) Soliciting the purchase of any life insurance product through the use of or in conjunction with any third party organization that promotes the welfare of or assists members of the Armed Forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance producer, or insurance product is affiliated, connected or associated with, endorsed, sponsored, sanctioned, or recommended by the U.S. Government or the Armed Forces.
- (c) The following acts or practices by an insurer or insurance producer lead to confusion regarding premiums, costs, or investment returns and are declared to be false, misleading, deceptive, or unfair:
  - (1) Using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid.
  - (2) Excluding individually issued annuities, misrepresenting the mortality costs of a life insurance product, including stating or implying that the product "costs nothing" or is "free."
- (d) The following acts or practices by an insurer or insurance producer regarding SGLI or VGLI are declared to be false, misleading, deceptive, or unfair:

- (1) Making any representation regarding the availability, suitability, amount, cost, exclusions, or limitations to coverage provided to a service member or dependents by SGLI or VGLI that is false, misleading, or deceptive.
  - (2) Making any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of SGLI or VGLI to private insurers that is false, misleading, or deceptive.
  - (3) Suggesting, recommending, or encouraging a service member to cancel or terminate his or her SGLI policy or issuing a life insurance policy that replaces an existing SGLI policy unless the replacement shall take effect upon or after the service member's separation from the Armed Forces.
- (e) The following acts or practices by an insurer and/or insurance producer regarding disclosure are declared to be false, misleading, deceptive, or unfair:
- (1) Deploying, using, or contracting for any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an insurance producer, if that is the case, for the purpose of soliciting the purchase of life insurance.
  - (2) Failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser.
  - (3) Excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance.
  - (4) Failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by section 10 of the Military Personnel Financial Services Protection Act, Pub. L. No. 109-290, p.16.
  - (5) Excluding individually issued annuities, when the sale is conducted in-person, face-to-face with an individual known to be a service member, failing to provide the applicant at the time the application is taken:
    - a. An explanation of any free look period with instructions on how to cancel if a policy is issued; and
    - b. Either a copy of the application or a written disclosure. The copy of the application or the written disclosure shall clearly and concisely set out the type of life insurance, the death benefit applied for, and its expected first year cost. A basic illustration that meets the requirements of rules adopted by the Commissioner concerning life insurance illustrations are sufficient to meet this requirement for a written disclosure.
- (f) The following acts or practices by an insurer or insurance producer with respect to the sale of certain life insurance products are declared to be false, misleading, deceptive, or unfair:
- (1) Excluding individually issued annuities, recommending the purchase of any life insurance product which includes a side fund to a service member

in pay grades E-4 and below unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable.

- (2) Offering for sale or selling a life insurance product which includes a side fund to a service member in pay grades E-4 and below who is currently enrolled in SGLI is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance. As used in this subdivision, "insurable needs" are the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate and/or survivors or dependents; and "other military survivor benefits" include, but are not limited to: the Death Gratuity, Funeral Reimbursement, Transition Assistance, Survivor and Dependents' Educational Assistance, Dependency and Indemnity Compensation, TRICARE Healthcare Benefits, Survivor Housing Benefits and Allowances, Federal Income Tax Forgiveness, and Social Security Survivor Benefits.
- (3) Excluding individually issued annuities, offering for sale or selling any life insurance contract which includes a side fund:
  - a. Unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;
  - b. Unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product. For this disclosure, the effective rate of return will consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule will be provided for at least each policy year from one to 10 and for every fifth policy year thereafter ending at age 100, policy maturity, or final expiration; and
  - c. Which by default diverts or transfers funds accumulated in the side fund to pay, reduce, or offset any premiums due.
- (4) Excluding individually issued annuities, offering for sale or selling any life insurance contract which after considering all policy benefits, including, but not limited to, endowment, return of premium, or persistency, does not comply with standard nonforfeiture law for life insurance.
- (5) Selling any life insurance product to an individual known to be a service member that excludes coverage if the insured's death is related to war, declared or undeclared, or any act related to military service except for an accidental death coverage, e.g., double indemnity, which may be excluded. (2007-535, s. 1; 2011-183, s. 48(a), (b), (c).)

**§ 58-58-350. Procedures and sanctions.**

(a) The provisions of G.S. 58-63-20, 58-63-25, 58-63-32, 58-63-35, 58-63-50, and 58-63-60 apply to this Part and are incorporated into this Part by reference.

(b) A violation of this Part is a ground for license suspension, probation, revocation, nonrenewal, or denial under G.S. 58-33-46 and subjects the violator to G.S. 58-2-70. (2007-535, s. 1.)

**Part 7. Unclaimed Life Insurance Benefits.**

**§ 58-58-360. Purpose [Short title].**

This part shall be known as the "Unclaimed Life Insurance Benefits Act". (2015-236, s. 1.)

**§ 58-58-370. No preemption of Unclaimed Property Act.**

Nothing in this Part shall be construed to amend, modify, or supersede the North Carolina Unclaimed Property Act, Article 4 of Chapter 116B of the General Statutes, including the authority of the North Carolina Department of State Treasurer to examine records and conduct an audit. Specifically, nothing in this Part shall restrict the authority of the North Carolina Department of State Treasurer to request or access records of an insurer and conduct an examination of the insurer's records under Chapter 116B of the General Statutes. (2015-236, s. 1.)

**§ 58-58-380. Definitions.**

The following definitions apply in this Part:

- (1) Account owner. – The owner of a retained asset account opened by a resident of this State.
- (2) Active premium payment. – Payment of premiums for policies or annuities that the insurer receives from outside the policy value, by check, payroll deduction, or any other similar method of deliberate payment.
- (3) Annuity. – Any active annuity contract issued in this State, other than an annuity used to fund an employment-based retirement plan or program where (i) the insurer does not perform the record-keeping services, (ii) the insurer is not committed by terms of the annuity contract to pay death benefits to the beneficiaries of specific plan participants, or (iii) the annuity is used to fund a preneed funeral contract as defined in G.S. 90-210.60.
- (4) Asymmetric conduct. – An insurer's selective use of information from the DMF prior to October 1, 2015, to identify whether certain persons are deceased, in order to terminate benefits, but not to determine whether insureds under the insurer's insurance policies in a non-active premium paying status are deceased for the purpose of paying benefits.

- (5) Beneficiary. – An individual or other entity entitled to benefits under a policy or annuity due to the death of the policy insured, annuity owner, annuitant, or account owner.
- (6) Death master file or DMF. – Any of the following:
  - a. The death master file from the United States Social Security Administration.
  - b. Any other database or service that an insurer may determine is substantially as inclusive as the death master file from the United States Social Security Administration for determining that a person has reportedly died.
- (7) Death master file match or DMF match. – A search of a DMF that results in a match of a person's Social Security number or name and date of birth.
- (8) Insurer. – Any insurance company authorized to transact life insurance business in this State.
- (9) Person. – The policy insured, annuity owner, annuitant, or account owner, as applicable under the policy, annuity, or retained asset account subject to this Part.
- (10) Policy. – any policy or certificate of life insurance issued in this State, but does not include any policy or certificate of life insurance that provides a death benefit under any of the following:
  - a. An employee benefit plan subject to the Employee Retirement Income Security Act of 1974, as periodically amended, compiled at 29 U.S.C. § 1002 et seq.
  - b. Any federal employee benefit program.
  - c. Government plans or church plans as defined in the Employee Retirement Income Security Act of 1974, as periodically amended, 29 U.S.C. § 1002 et seq.
  - d. A policy or certificate of life insurance that is used to fund a preneed funeral contract as defined in G.S. 90-210.60.
  - e. A policy or certificate of credit life or accident and health insurance.
- (11) Record-keeping services. – Those circumstances under which the insurer has agreed with a group life insurance policyholder to be responsible for obtaining, maintaining, and administering in its own systems information about each individual insured under the policyholder's group life insurance contract that includes at least all of the following items:
  - a. Individual insured's Social Security number or name and date of birth.
  - b. Beneficiary designation information.
  - c. Coverage eligibility.
  - d. Benefit amount.
  - e. Premium payment status.
- (12) Retained asset account. – An account created when a life insurance company pays the proceeds from a life insurance policy or annuity contract to a beneficiary by establishing an account containing those proceeds in name of and for use by the beneficiary. (2015-236, s. 1.)

**§ 58-58-390. Requirements for insurers.**

(a) To the extent that an insurer's records of its in-force policies, annuities, and account owners are available electronically, an insurer shall perform a comparison of such in-force policies, annuities, and account owners against a death master file, on a semiannual basis, to identify potential death master file matches. To the extent that an insurer's records of its in-force policies, annuities, and account owners are not available electronically, an insurer shall perform a comparison of such in-force policies, annuities, and account owners against a death master file, on a semiannual basis, to identify potential death master file matches, using the records most easily accessible by the insurer.

(b) The requirements of subsection (a) of this section shall not apply to any of the following:

- (1) Policies or annuities for which the insurer has received an active premium payment within the 18 months immediately preceding the death master file comparison.
- (2) Any policies, annuities, or retained asset accounts issued or delivered prior to October 1, 2015, for which the insurer attests, in a sworn statement signed by an officer or director of the insurer that is subject to perjury and delivered to the Commissioner, that the insurer has done all of the following:
  - a. Not engaged in asymmetric conduct.
  - b. Has historically practiced compliance with the requirements of G.S. 58-63-15(11) with respect to the investigation, handling, and payment of policy proceeds.
  - c. Monitored the limiting age of each person, as stated in the policy, and performed its obligations under Chapter 116B of the General Statutes when an insured reached the limiting age.
- (3) Group life insurance policies for which the insurer does not perform record-keeping services.

(c) An insurer may comply with the requirements of subsection (a) of this section by using the full death master file once and thereafter using the death master file update files for future comparisons.

(d) An insurer exempted under subdivision (b)(2) of this section shall comply with the requirements of subsection (a) of this section for all policies, annuities, or retained asset accounts issued or delivered on or after October 1, 2015.

(e) Within 90 days of learning of the possible death of a person, through a DMF match or otherwise, the insurer shall do all of the following:

- (1) Confirm the death of such person against other available records and information.
- (2) Review its records to determine whether such deceased person had purchased any other products with the insurer.
- (3) Determine whether benefits may be due in accordance with any applicable policy, annuity, or retained asset account.
- (4) Locate the beneficiary or beneficiaries.

- (5) Provide the appropriate claims forms or instructions to the beneficiary to make a claim and notify the beneficiary of the actions necessary to submit a valid claim.
- (6) Maintain documentation of all efforts to locate the beneficiary or person, as applicable.

(f) Except as prohibited by law, an insurer may disclose only the minimum necessary identifying personal information about such an insured, annuitant, account owner, or beneficiary to anyone who the insurer reasonably believes may be able to assist the insurer in locating the beneficiary or a person otherwise entitled to payment of the claims proceeds.

(g) An insurer or its service provider shall not charge any beneficiary or other person who may be entitled to benefits any fees or costs associated with a DMF search or the verification of a DMF match conducted pursuant to this section.

(h) The benefits from life insurance policies, annuities, or retained asset accounts and any applicable accrued contractual interest shall first be payable to the beneficiaries or account owners as provided for in such policies, annuities, or retained asset accounts. In the event the beneficiaries or account owners cannot be found, the benefits and any associated contractual interest shall escheat to the State as unclaimed property as set forth in Article 4 of Chapter 116B of the General Statutes.

(i) Nothing in this section limits an insurer from requiring a valid death certificate as part of any claims validation process or otherwise requiring compliance with the terms and conditions of the policy or annuity relative to filing and payment of claims. (2015-236, s. 1.)

**§ 58-58-400. Noncompliance may constitute unfair claims settlement practice.**

A pattern of failures to meet the requirements of this Part may constitute an unfair claims settlement practice under G.S. 58-3-100(a)(5) and G.S. 58-63-15. Nothing in this Part shall be construed to create or imply a private cause of action for a violation of this Part. (2015-236, s. 1.)